

TRANSPARENCY INTERNATIONAL
the global coalition against corruption

NATIONAL INTEGRITY SYSTEM ASSESSMENT: CURAÇAO 2013

Transparency International is the global civil society organisation leading the fight against corruption. Through more than 100 chapters worldwide and an international secretariat in Berlin, we raise awareness of the damaging effects of corruption and work with partners in government, business and civil society to develop and implement effective measures to tackle it.

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I. INTRODUCTORY INFORMATION

Between 2012 and 2013, Transparency International conducted a National Integrity System (NIS) assessment on Curaçao. The Caribbean island has a population of 150,560 and is an autonomous country within the Kingdom of the Netherlands. It has gone through significant political change in recent years following dissolution of the Netherlands Antilles in 2010 and the resulting modification of its country status.

Corruption is rarely an isolated phenomenon found only within a specific institution, sector or group of actors. It is usually of a systemic nature, and fighting it requires a holistic and all-encompassing strategy. This is why in 2001 Transparency International developed the concept of National Integrity System assessments.

The purpose these studies is to assess systemic corruption risks faced by a country, and produce a set of recommendations on how to mitigate those risks in the future. Those recommendations can then be used by actors in civil society, government and the private sector for promoting integrity in the country.

To date, assessments have been completed in more than 100 countries. Transparency International conducted its first National Integrity System study in the Caribbean region in Jamaica in 2003, followed by a Caribbean composite report in 2004. Most recently, from 2009-2011, in addition to numerous assessments in Europe, Asia and elsewhere, Transparency International carried out an assessment in the Turks and Caicos Islands – another small Caribbean island which has undergone a constitutional upheaval in recent years. During the assessment period, numerous high-level corruption scandals in the Turks and Caicos resulted in the partial suspension of its constitution. Our study suggested that it was overall weakness in the country's corruption-fighting systems which allowed individual actors to pursue their own interests at the expense of the public good.

While each country context is unique, this research gave us experience of the challenges small island states in this region can face. It is our hope that the Curaçao assessment will generate a set of concrete recommendations for the island's key institutions and local actors to pursue in order to strengthen transparency, accountability and integrity. The assessment should also provide a set of good governance benchmarks for the citizens of Curaçao to hold their government and elected officials to account.

The assessment process in Curaçao is consultative and seeks to involve key stakeholders on the island. Transparency International staff visited Curaçao in September 2012 and again in April 2013 to meet with the local research team and various experts from the principal institutions involved in the assessment. All discussions were constructive and well attended by stakeholders, who appeared to place high importance on the dialogue. We hope that by using this participatory approach, our assessment provides a useful set of recommendations for Curaçao that society can use to push for positive change.

As announced in April 2012, Transparency International signed a grant agreement with the Government of Curaçao to undertake an assessment that ensures our complete independence in all phases of the process, from initial research to final outcome and recommendations.

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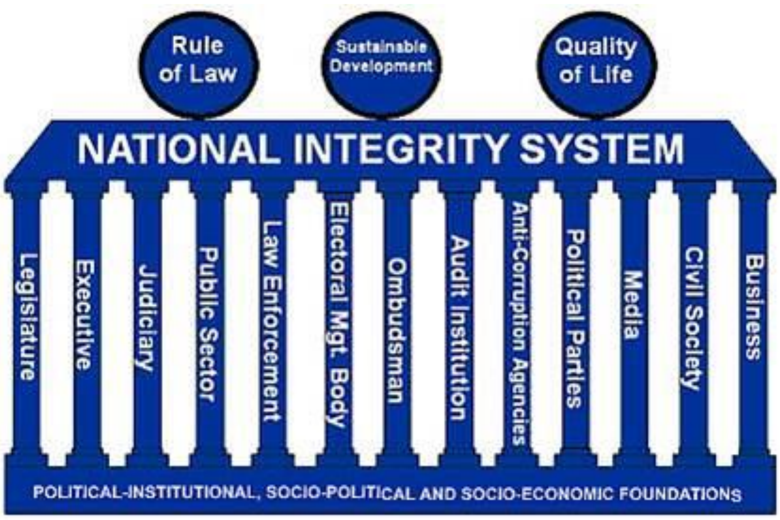
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Acknowledgements

Transparency International would like to thank all those who contributed to this assessment. We would like to give a special thanks to members of the local advisory group, who selflessly and tirelessly provided essential local expertise and guidance to help ensure the highest quality assessment possible, as well as to those who were interviewed and/or provided information by a written questionnaire or otherwise, or participated in one or more sessions with Transparency International. We would also like to acknowledge the many individuals who provided a thoughtful review of one or more chapters to correct factual errors; and in particular Jaime Saleh for his careful review.

II. ABOUT THE NATIONAL INTEGRITY SYSTEM ASSESSMENT

The National Integrity System assessment approach used in this report provides a framework to analyse both the vulnerabilities of a given country to corruption as well as the effectiveness of national anti-corruption efforts. The framework includes all principal institutions and actors that form a state. These include all branches of government, the public and private sector, the media, and civil society (the ‘pillars’ as represented in the diagram below). The concept of the National Integrity System has been developed and promoted by Transparency International as part of its holistic approach to fighting corruption. While there is no blueprint for an effective system to prevent corruption, there is a growing international consensus as to the salient institutional features that work best to prevent corruption and promote integrity.



A National Integrity System assessment is a powerful advocacy tool that delivers a holistic picture of a country’s institutional landscape with regard to integrity, accountability and transparency. A strong and functioning National Integrity System serves as a bulwark against corruption and guarantor of accountability, while a weak system typically harbours systemic corruption and produces a myriad of governance failures. The resulting assessment yields not only a comprehensive outline of reform needs but also a profound understanding of their political feasibility. Strengthening the National Integrity System promotes better governance across all aspects of society and, ultimately, contributes to a more just society.

Definitions

The definition of 'corruption' which is used by Transparency International is as follows:

> 'The abuse of entrusted power for private gain. Corruption can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs.'[1]

'Grand corruption' is defined as 'Acts committed at a high level of government that distort policies or the functioning of the state, enabling leaders to benefit at the expense of the public good.'[2] 'Petty corruption' is defined as 'Everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies.'[3] 'Political corruption' is defined as 'Manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth.'[4]

Objectives

The key objectives of the National Integrity System-Curaçao assessment are to generate:[5]

- an improved understanding of the strengths and weaknesses of Curaçao's National Integrity System within the anti-corruption community and beyond
- momentum among key anti-corruption stakeholders in Curaçao for addressing priority areas in the National Integrity System

The primary aim of the assessment is therefore to evaluate the effectiveness of Curaçao's institutions in preventing and fighting corruption and in fostering transparency and integrity. In addition, it seeks to promote the assessment process as a springboard for action among the government and anti-corruption community in terms of policy reform, evidence-based advocacy or further in-depth evaluations of specific governance issues. This assessment should serve as a basis for key stakeholders in Curaçao to advocate for sustainable and effective reform.

Methodology

In Transparency International's methodology, the National Integrity System is formed by 13 pillars representing all key public and private institutions in a country's governance system. In the Curaçao assessment, to pay due attention to the importance of the financial sector in the country's governance system, it was decided to add an additional pillar, 'Supervisory institutions private sector' (pillar 9, see below), in order to consider specifically the supervision of the financial integrity of the private sector.

[1] *The Anti-Corruption Plain Language Guide*, Transparency International, 2009, p.14. http://www.transparency.org/whatwedo/pub/the_anti_corruption_plain_language_guide [accessed 21 December 2012].
[2] Ibid., p.23.
[3] Ibid., p.33.
[4] Ibid. p.35.
[5] Call for proposals: National Integrity System (NIS) assessment lead researcher in Curaçao, 2012, http://www.transparency.org/whoweare/work [accessed 4 May 2012].

The Curaçao assessment addresses 14 pillars:

CORE GOVERNANCE INSTITUTIONS	PUBLIC SECTOR AGENCIES	NON-GOVERNMENTAL ACTORS
Legislature	Public sector	Anti-corruption agency
Executive	Law enforcement agencies	Media
Judiciary	Electoral management body	Civil society
	Ombudsman	Political parties
	Supreme audit and supervisory institutions (public sector)	Business
	Supervisory institutions private sector	

Each of the 14 pillars is assessed along three dimensions that are essential to its ability to prevent corruption:

- its overall capacity, in terms of resources and independence
- its internal governance regulations and practices, focusing on whether the institutions in the pillar are transparent, accountable and act with integrity
- its role in the overall integrity system, focusing on the extent to which the institutions in the pillar fulfill their assigned role with regards to preventing and fighting corruption

Each dimension is measured by a common set of indicators. The assessment examines for every dimension both the legal framework of each pillar as well as the actual institutional practice, thereby highlighting any discrepancies between the formal provisions and reality in practice.

DIMENSION	INDICATORS (LAW AND PRACTICE)
Capacity	Resources Independence
Governance	Transparency Accountability Integrity

Role within governance system	Pillar-specific indicators

The assessment does not seek to offer an in-depth evaluation of each pillar. Rather it seeks breadth, covering all relevant pillars across a wide number of indicators in order to gain a view of the overall system. The assessment also looks at the interactions between pillars, as weaknesses in a single institution could lead to serious flaws in the entire system. Understanding the interactions between pillars helps to prioritise areas for reform.

In order to take account of important contextual factors, the evaluation is embedded in a concise analysis of the overall political, social, economic and cultural conditions – the 'foundations' – in which the 14 pillars operate (see Chapter IV. Country Profile: Foundations for the National Integrity System).

POLITICS	SOCIETY	ECONOMY	CULTURE

The National Integrity System assessment is a qualitative research tool. It is guided by a set of 'indicator score sheets', developed by the Transparency International secretariat. These consist of a 'scoring question' for each indicator, supported by further guiding questions and scoring guidelines. The following scoring and guiding questions, for the resources available in practice to the judiciary, serve as but one example of the process:

PILLAR	Judiciary
INDICATOR NUMBER	50.0.25
INDICATOR NAME	Resources (practice)
SCORING QUESTION	To what extent does the judiciary have adequate levels of financial resources, staffing and infrastructure to operate effectively in practice?
GUIDING QUESTIONS	Is the budget of the judiciary sufficient for it to perform its duties? How is the judiciary's budget apportioned? Who apportions it? In practice, how are salaries determined (by superior judges, constitution, law)? Are salary levels for judges and prosecutors adequate or are they so low that there are strong economic reasons for resorting to corruption? Are salaries for judges roughly commensurate with salaries for practising lawyers? Is there generally an adequate number of clerks, library resources and modern computer

	equipment for judges? Is there stability of human resources? Do staff members have training opportunities? Is there sufficient training to enhance a judge's knowledge of the law, judicial skills including court and case management, judgment writing and conflicts of interest?
MINIMUM SCORE (0)	The existing financial, human and infrastructural resources of the judiciary are minimal and fully insufficient to effectively carry out its duties.
MID-POINT SCORE (50)	The judiciary has some resources. However, significant resource gaps lead to a certain degree of ineffectiveness in carrying out its duties.
MAXIMUM SCORE (100)	The judiciary has an adequate resource base to effectively carry out its duties.

The guiding questions, used by Transparency International worldwide, for each indicator were developed by examining international best practices, as well as by using our own experience of existing assessment tools for each of the respective pillars, and by seeking input from (international) experts on the respective institutions. These indicator score sheets provide guidance for the Curaçao assessment, but when appropriate the lead researcher has added questions or left some questions unanswered, as not all aspects are relevant to the national context. The full toolkit with information on the methodology and score sheets are available on the Transparency International website.[6]

To answer the guiding questions, the research team relied on four main sources of information: national legislation, secondary reports and research, interviews with key experts, and written questionnaires. Secondary sources included reliable reporting by national civil society organisations, international organisations, governmental bodies, think tanks and academia.

To gain an in-depth view of the current situation, a minimum of two key informants were interviewed for each pillar – at least one representing the pillar under assessment, and one expert on the subject matter but external to it. In addition, more key informants, that is people 'in the field', were interviewed. Professionals with expertise in more than one pillar were also interviewed in order to get a cross-pillar view. A full list of interviewees (with 38 people in total) is contained in Annex I. Exploratory talks were conducted with an additional ten people. To gain a broader view of the current situation in several pillars, 49 written questionnaires with the main questions from the indicator score sheet were sent to organisations in key positions within some pillars. Of the 49 questionnaires, 23 were completed and returned. An overview can be found in Annex II.

[6] www.transparency.org/policy_research/nis/methodology [accessed 21 December 2012].

The scoring system

While this is a qualitative assessment, numerical scores are assigned in order to summarise the information and to help highlight key weaknesses and strengths of the integrity system. Scores are assigned on a 100-point scale in 25-point increments including five possible values: 0, 25, 50, 75 and 100. The scores prevent the reader getting lost in the details and promote reflection on the system as a whole, rather than focusing only on its individual parts. Indicator scores are averaged at the dimension level, and the three dimensions scores are averaged to arrive at the overall score for each pillar, which provides a general description of the system's overall robustness.

VERY STRONG	81-100
STRONG	61-80
MODERATE	41-60
WEAK	21-40
VERY WEAK	0-20

The scores are not suitable for cross-country rankings or other quantitative comparisons, due to differences in data sources across countries applying the assessment methodology and the absence of an international review board tasked to ensure comparability of scores.

Consultative approach and plausibility of findings

The assessment process in Curaçao had a strong consultative component, seeking to involve the key anti-corruption actors in government, civil society and other relevant sectors. This approach had two aims: to generate evidence and to engage a wide range of stakeholders with a view to building momentum, political will and civic demand for reform initiatives.

The consultative approach had three main parts: an advisory group, information sessions for key stakeholders, and a national stakeholder workshop.

NATIONAL INTEGRITY SYSTEM ADVISORY GROUP	
M.L. (Mike) Alexander LLM	Civil law notary and member of supervisory- and management boards
R.A.B. (Richard) Begina Msc	Former director of the department of Constitutional Affairs of the Netherlands Antilles
R. (Ronald) Gomes Casseres Msc	Former banker and current member of supervisory boards and advisory councils

F.M. (Frank) Hanze LLM	Former secretary general of Parliament of the Netherlands Antilles
S.M.C. (Stella) Herrera Msc	Former diplomat, former central banker, international relations and anti money laundering expert
R.H. (Roland) Ignacio	Secretary general of Central Trade Unions in Curaçao and board member of the Pension Funds for Employees in Public Service

The members of the advisory group met nine times (23 and 29 August 2012; 3 and 7 September, 3 December 2012; 21 January, 2, 24 and 26 April 2013). At the meetings, extensive feedback was given by the advisors to the lead researcher on the methodology (for example identifying interviewees and workshop attendees) and findings. The draft report was critically reviewed and indicator scores were validated by the advisory group. As peer reviewer, Professor Jaime M. Saleh (former governor of the Netherlands Antilles and former president of the Court of Justice of Aruba, Curaçao, Sint Maarten and Bonaire) also provided comments on the draft report.

At the beginning of September 2012 several information sessions with key stakeholders were organised under the supervision of Transparency International, Alejandro Salas (regional director, Americas Department) and Zoë Reiter (regional programme manager, Americas Department). The meetings resulted in a number of useful recommendations on how to conduct the assessment in Curaçao (see Annex III for an overview of the participants).

In April 2013 the assessment process culminated in a consultative national integrity workshop where, under supervision of Transparency International's Zoë Reiter, the preliminary findings of the evaluation were discussed among key stakeholders and recommendations for priority actions (or even the contours of a comprehensive national anti-corruption strategy) were identified.

Each draft pillar went through a series of internal and external reviews. The Transparency International secretariat and the advisors reviewed the draft materials and agreed upon or adjusted the preliminary scores assigned by the lead researcher. Several draft chapters were reviewed by representatives of the insitutions under assessment to correct errors of fact. The draft report was updated with the outcomes of the national integrity workshop. The full report was reviewed by the Transparency International secretariat, the advisory group, and one external academic reviewer who provided an extensive set of comments and feedback. Finally the report was published and disseminated widely in Curaçao.

Limitations

Assessments are in general conducted by local in-country organisations, usually Transparency International national chapters. We have national chapters in more than 100 countries, including in several Caribbean countries.[7] There is no Transparency International national chapter in Curaçao.

While the methodology is developed to be robust and replicable, it does not claim to cover the full spectrum of issues on integrity and governance of Curaçao. Due to the prescribed approach of the assessment and time and budget limitations, choices had to be made on the selection of oral and written sources as well as on the selection of issues to be covered.

[7] www.transparency.org/whoweare/organisation/our_chapters [accessed 21 December 2012].

The assessment represents the current state of the National Integrity System in Curaçao, using – with a few exceptions – sources going back no more than five years. The information-gathering and preparation of the first draft took place between September 2012 and May 2013, a very unsettled period. In the research phase, an interim cabinet (Cabinet-Betrian) was established (September 2012), elections took place (October 2012), a temporary ‘non-political’ government (Cabinet-Hodge) was installed (December 2012), the political leader of the political group *Pueblo Soberano*, Mr. Helmin Wiels, was murdered (May 2013) and the fourth cabinet of Curaçao (Cabinet-Asjes) was installed (June 2013). The research team took note of feelings of distrust among several stakeholders within the different pillars, and was required to provide a lot of explanation and reassurance before it could start collecting data.

Other distinctive challenges to the assessment in Curaçao concerned, among other things, the complexities of the Curaçao regulatory framework – partly instituted only since 10 October 2010 – and the limited availability of official documents online, for example laws, regulations and policy papers. Secondary studies and academic works on Curaçao are available, but rare. In addition, the political polarisation amongst people in Curaçao challenged the research team to ensure it had a strong evidence-base to construct a true picture of the integrity strengths and risks of each pillar.

This assessment does not pretend to be complete in all aspects, but should be considered as a first step in detecting the strengths and weaknesses in the National Integrity System of Curaçao. It can also be used as a benchmarking tool to measure progress over time.

III. EXECUTIVE SUMMARY

Corruption is rarely an isolated phenomenon found only within a specific institution, sector or group of actors. It is usually of a systemic nature and fighting it requires a holistic and all-encompassing strategy. This is why Transparency International developed the concept of National Integrity System (NIS) assessments in 2001. The purpose of a National Integrity System assessment is to assess systemic corruption risks faced by a country and produce a set of recommendations on how to mitigate those risks in the future. Those recommendations can then be used by actors in civil society, government and the private sector for promoting integrity and creating defences against corruption in the country. In order to be effective and sustained, the prevention of corruption must be considered a responsibility of leaders and communities in all areas of society; it is task that falls on many rather than any one individual.

In 2012, Transparency International signed a grant agreement with the Government of Curaçao to undertake the National Integrity System assessment on the island. To date, assessments have been completed in more than 100 countries around the world, including in Latin America, the Caribbean, Europe, Asia and Africa.

The assessment focuses on an evaluation of the key public institutions and non-state actors in a country's governance system with regard to (1) their overall capacity, (2) their internal governance systems and procedures, and (3) their role in the overall integrity system. The assessment examines both the formal legal framework of each pillar and the actual institutional practice. The analysis highlights discrepancies between the formal provisions and reality on the ground, making it clear where there are gaps in the integrity system. The assessment concentrates on the institutions at the country level, and only refers to the Kingdom level where this is thought to be relevant to improve understanding of the integrity system of the country as it stands today.

The assessment process in Curaçao has been consultative and seeks to involve key stakeholders on the island. Transparency International staff visited Curaçao in September 2012 and again in April 2013 to meet with the local research team and various experts from all of the principal institutions involved in the assessment. All discussions have been constructive and well attended by most stakeholders, who appeared to place high importance on the dialogue.

It is Transparency International's hope that the Curaçao assessment will generate a set of concrete recommendations for the island's key institutions and local actors to pursue in order to strengthen transparency, accountability and integrity. It should also provide a set of good governance benchmarks for the citizens of Curaçao to hold their government and elected officials to account through public dialogue, policy engagement and voting.

National Integrity System context

Any country's National Integrity System is deeply embedded in the country's overall social, political, economic and cultural context. In Curaçao, society can be characterised by the absence of a strong middle class, roughly dividing the country into 'haves' and 'have nots'. The country is – or at least was in 2009 – also strongly divided over the desired level of influence the Kingdom is to have in local affairs, which clearly marked the following elections, and went hand in hand with a change in the political landscape. Political parties are not sufficiently able to effectively overcome these and other divisions in the political sphere. The dominance of party discipline governs both acts of members of Parliament as well as those of the Executive, blurring the constitutionally-prescribed division of powers. As a result, the Curaçao National Integrity System contains insufficient

safeguards to ensure that the rights of the usually large minority are adequately represented in the political sphere.

Prevailing ethics, norms and values are also not especially conducive to an effective National Integrity System, although the level of awareness of the importance of good governance is growing. The level of interpersonal trust is not high. Although some do challenge breaches of integrity, in practice, due to the risks involved in naming and shaming and a fear of job loss, only a few people actually are willing and financially or otherwise able to do so. Those without a credible exit option, such as another job in Curaçao or abroad, or a sufficient amount of money, are not in a good position to challenge misconduct of those in power. As a result, accountability mechanisms in place are not sufficiently supported.

Moreover, whereas there are many allegations of corruption, hard evidence on the state of affairs of corruption in Curaçao is not available and there are few facts to provide insight into the extent and types of corruption. Therefore, Curaçao's corruption profile is characterised by a gap between the perceptions of corruption on the one hand, and the amount of available, concrete evidence on corrupt practices on the other. This fuels distrust and undermines confidence in Curaçao's integrity system.

The financial situation of the country is also not especially conducive to an effective National Integrity System, although recently important measures have been taken to restore fiscal stability and structurally improve the country's public finances. Nevertheless, the country still faces important challenges, especially in the field of education and criminality.

Overall assessment of the National Integrity System

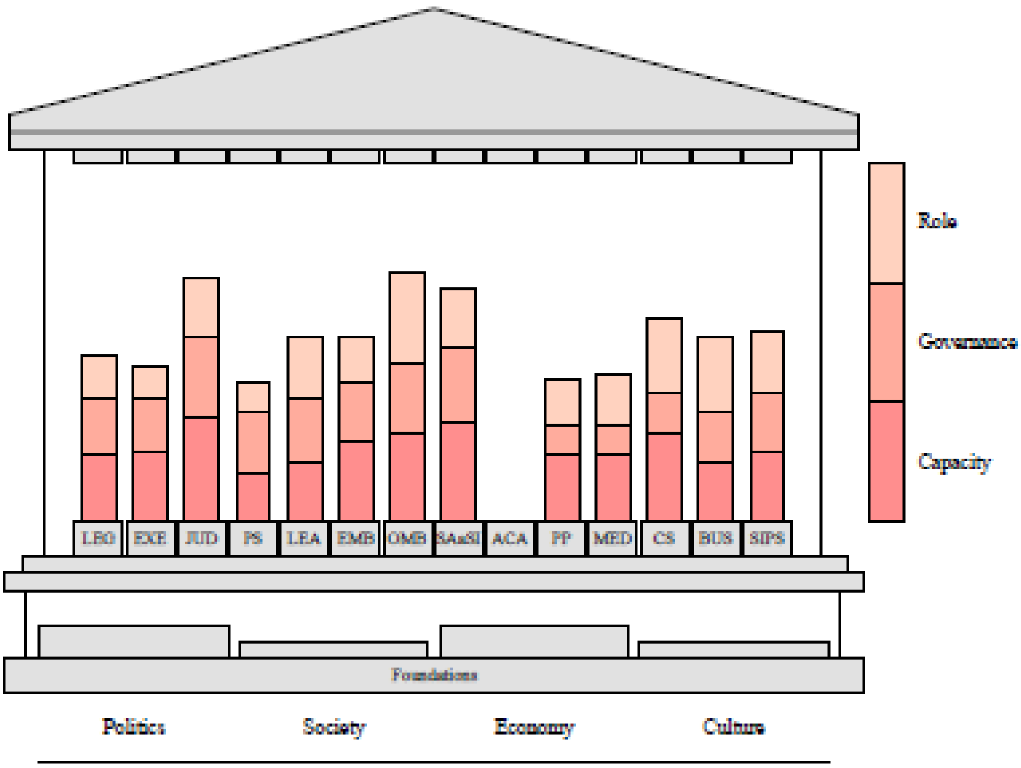
The National Integrity System is characterised by the strength of three public institutions: the judiciary, the Ombudsman, and the supreme audit and supervisory institutions (public sector). However, their performance is weakened because of the weaknesses in other pillars. Most notably, shortcomings in political parties, which feed into the legislature, the Executive and the public sector, suggest critical deficiencies in the core of the National Integrity System. The private watchdog of the media magnifies the weaknesses, whereas the impact of civil society and business is difficult to measure.

Moreover, the Curaçao legislative framework is a fairly strong one, and further strengthened in the run-up to the constitutional changes in 2010. However, there are some weaknesses and there are considerable gaps between law and practice in several of the pillars, most notably those of Parliament, the Executive and the media.

The following diagram visualises the scores for the pillars and illustrates their relative strength. The overall score for each pillar is made up of the quantitative assessment of the three dimensions: capacity, governance and role.[8] The foundations represent the country profile analysis of the political-institutional foundations, socio-political foundations, socio-economic foundations and socio-cultural foundations.

[8] The prevention of corruption must be considered as an executive responsibility by leaders in all areas of society.

National Integrity System



LEG. Legislature
EXE. Executive
JUD. Judiciary
PS. Public Sector
LEA. Law Enforcement Agencies
EMB. Electoral Management Body
OMB. Ombudsman

SAaSI. Supreme Audit and Supervisory Institutions Public Sector
ACA. Anti Corruption Agencies
PP. Political Parties
MED. Media
CS. Civil Society
BUS. Business
SIPS. Supervisory Institutions Private Sector

National Integrity System pillars

The **judiciary**, the **Ombudsman** and the **supreme audit and supervisory institutions (public sector)**[9] are three of the strongest institutions of the Curaçao National Integrity System. This finding is very important as it shows that the institutions which typically are entrusted to provide oversight and uphold the rule of law have relatively high levels of integrity. This study shows that they are largely independent and considered adequately resourced. They have the potential to effectively create a system of checks-and-balances over the public, private and social sectors of the country and serve as a key defence against impunity. Also, the instruction issued by the Kingdom Council of Ministers on the recommendation of the Board of Financial Supervision stands out as one of the few illustrations since October 2010 of effective oversight of the Executive's activities in practice.

[9] This pillar assesses the Curaçao Court of Audit (*ARC – Algemene Rekenkamer Curaçao*), the Foundation Administration's Accountant's Bureau (*SOAB – Stichting Overheidsaccountantsbureau*) and the Board of Financial Supervision (*Cft – College financieel toezicht*).

However, this potential is undermined by weaknesses identified in other pillars. For example, even when court decisions and recommendations of the Ombudsman and the audit and supervisory institutions are effectively issued, the lack of enforcement or follow-up undermines their impact.

The assessment reveals that there are broader concerns as well about other pillars of the country promoting integrity, particularly those inputting into the political and electoral processes in Curaçao.

The **electoral management body** should be mentioned first because of its pivotal role in safeguarding the integrity of the electoral process. The assessment of this pillar stands out given the inverse gap between policy and practice. Whereas all other pillars score higher for law than for practice, the electoral management body showed the reverse; practice was far more positively assessed than the legal framework. While this is positive in certain respects, weaknesses in the legal framework remain an important concern. This is particularly troubling in regard to the insufficient legal safeguards that exist to ensure the body's independence as well as provisions which provide any outgoing cabinet the opportunity to leave its mark on the body's composition. This loophole was already identified in 2010 and has gained significance now that the electoral management body is also tasked with regulating candidate and political party finances. Until this is corrected, there exists the possibility that any party exiting power can exert influence over future elections and more broadly the political party system.

The weakness of the laws regulating the electoral management body is of particular concern given the governance challenges facing **political parties**. The assessment reveals that political parties are not functioning well and more often than not appear to represent the interests of their leaders and members rather than those of the electorate. There is also very limited transparency in political party financing. The legislation to regulate how parties are funded has been in place since 2010 but has not yet been effectively implemented. The law also contains significant loopholes and ambiguities which need to be addressed. As a result, political parties score particularly low on transparency and accountability. The level of integrity of political parties could not be scored due to a lack of sufficient information and response form the parties themselves. For this reason, political parties are in many ways one of the great unknowns within the integrity system of Curaçao. This should be of particular concern because they elect or appoint members to many of the bodies making up Curaçao's constitutional system.

The weaknesses in Curaçao's political parties in turn undermine the independence of both the **legislature** and the **Executive**. Although Parliament and members of Parliament do act independently on occasion, this is considered to be significantly limited by party discipline. Consequently, the legislature is not sufficiently able to provide effective oversight of the Executive. This is especially worrying because, although there are comprehensive additional legal checks and balances within the country and the Kingdom to hold the Executive accountable, in practice these are not used very often or effectively.

The integrity of both institutions also requires attention. Parliament, for its part, lacks a code of conduct and there are no specific provisions related to reporting gifts and monies received from additional functions. When it comes to the Executive, there are more integrity provisions in place, including measures to ensure that ministers do not decide on issues where they might have a conflict of interest, such as when they involve a minister's own business interests, that of a family member or other personal interests. However, monitoring compliance is not sufficiently provided for.

With regards to prioritising anti-corruption and accountability as a key concern in the country, there have been a number of reforms initiated by the Executive and approved by Parliament in this respect. However, some reforms are still 'in the legislative process' and awaiting enactment, while other pieces of legislation have been approved in a weakened form. This is largely a result of the fact that the Executive does not prioritise the implementation of legislative reforms and Parliament, with a few exceptions, does not sufficiently press the Executive to do so.

The Executive, for its part, does not do particularly well in managing the **public sector**, and the capacity of the public sector is undermined by the at times strong influence of the Executive on

appointments in the sector as well as its output. Both the Executive's hands-on approach as well as its passive form of not taking action limit the capacity of the public sector to operate effectively. The specific circumstances of the new constitutional relations, requiring two executive layers to be merged into one, have not enhanced the sector's performance so far, and have done little to further transparency, accountability and integrity. They have also prevented the public sector from effectively addressing anti-corruption issues through public education, cooperation with third parties and increased efforts to safeguard integrity in public procurement.

That said, in many respects, the public sector does have several already fairly robust governance provisions, and the issue is one of implementation. For example, as of yet, there are no effective mechanisms to enforce the new integrity rules, and so far no confidants (*vertrouwenspersonen*) have been appointed to allow civil servants to address integrity issues within the administration on a confidential basis. Moreover, positions involving confidentiality (*vertrouwensfuncties*) have not yet been classified as such. Meanwhile Dutch development funds allocated to support good governance have dried up. Most money has already been spent or, because it was not spent in the projected time frame, is no longer available. Public companies and public foundations face important issues with transparency and accountability, and neither the letter nor the spirit of the corporate governance code in place is yet fully observed.

The **supervisory institutions of the private sector**, which include the Central Bank of Curaçao and Sint Maarten (CBCS), the Gaming Control Board (GCB) and the Financial Intelligence Unit (MOT – *Meldpunt Ongebruikelijke Transacties*), show a mixed track record. The weakest link in this pillar, no doubt, is the lack of any supervision on gaming activities other than those conducted by the country's casinos. That said, the casino supervisor, GCB, is only doing slightly better. In particular the operational independence of the GCB from the casino sector has been called into question, while provisions to ensure the transparency and accountability of the GCB are notable by their absence. The legal framework to ensure that CBCS and MOT are answerable for their actions, on the other hand is relatively strong, although provisions to hold the supervisors accountable for the use of their supervisory and sanctioning powers could be improved. For CBCS, the most pressing challenge is the lack of effective communication between the different relevant actors which means that accountability of CBCS is currently not ensured. This is particularly important to counter-balance the necessary operational independence of the Bank. Moreover, although the legal framework allows for effective integrity supervision of the private sector, due to a lack of publicly-available information – or, in MOT's case, simply because its supervisory activities have only just started – the effectiveness of the supervisors' activities in practice cannot be assessed.

In terms of **law enforcement agencies**, the public prosecutor's commitment to fighting corruption is undermined by limited financial and human resources available to the police, particularly in the field of combating financial crime. Likewise, the existing financial and human resources of the *Landsrecherche* – Curaçao's special police force dedicated to investigating possible criminal conduct of government officials and civil servants – are minimal and fully insufficient to effectively carry out its duties. This seriously undermines the ability of the law enforcement agencies to adequately prosecute corruption cases, which are often complicated and time-consuming, and require special expertise. Institutional mistrust within an agency between law enforcement officials and also with other law enforcement agencies, and a lack of coordination also negatively affects the ability of law enforcement agencies to detect and investigate corruption cases. Finally, the confidential nature of corruption investigations also limits the ability of the Public Prosecutor's Office to adequately inform the public, who often do not know whether corruption cases are being investigated and if so, what is involved.

This lack of transparency fuels allegations of a lack of prosecution in the media coverage in Curaçao. The **media** have to some extent contributed to raising awareness of the problem of corruption, but, positive exceptions notwithstanding, reports are often limited, biased and of poor quality. There is an insufficient number of trained journalists and the area of investigative journalism is virtually non-existent. Moreover, because media companies to a large extent depend on financiers and the advertising market, 'subtle exertion of influence' on media content does occur. This

undermines the independence and the accountability of the media and prevents them from effectively fulfilling their role as a watchdog.

Some **civil society organisations** and **businesses**, meanwhile, are currently performing their role within the Curaçao National Integrity System adequately. Both provide input to on-going anti-corruption discussions, although, as yet, the impact of their activities to hold the Executive accountable for its actions is difficult to measure. However, the overall level of transparency of these pillars is inadequate, and there are almost no legal provisions requiring making information available publicly. Business also shows a mixed picture with regards to integrity safeguards. The financial sector and certain professional organisations have strong mechanisms in place, including integrity and complaint procedures, but the consistency and effectiveness of the integrity efforts is not publicly known. In addition, in the very largest part of the business community, such mechanisms and procedures do not exist at all. In general there is a reactive approach regarding integrity issues.

Curaçao does not have an independent anti-corruption institution. Such an institution is recommended in the United Nations Convention against Corruption, which is enacted by the Kingdom of the Netherlands, but not ratified on behalf of Curaçao. Currently the government of Curaçao is working on finalising the relevant legislation needed to ratify this and other treaties against corruption.

Policy recommendations

The Curaçao NIS assessment has yielded a number of concrete recommendations to address the weaknesses identified through the research and to strengthen the anti-corruption safeguards in the country. The 4 key areas which require particular attention are identified below. More targeted pillar-specific recommendations are presented in Chapter VIII (Conclusions and Recommendations)

1. **Curaçao must ratify the United Nations Conventions Against Corruption as a matter of urgency and develop an action plan to ensure implementation and compliance.**

2. **All sectors of society must strive to increase the levels of transparency in their activities, internal procedures and funding sources. Given the pivotal role played by political parties in the Curaçao NIS, the transparency of political party financing requires particular attention.**

3. **The Government should prioritise funding and capacity building of law enforcement agencies to enable them to effectively conduct investigations and follow-up on cases put forward by Curaçao's active watchdog and oversight agencies.**

4. **Given the central role of the public sector in Curaçao's NIS, the Government must work to ensure greater independence and accountability of the public sector, ensuring that principles of proper administration are adhered to, that all internal mechanisms to ensure accountability and integrity are in place, and that compliance with these mechanisms is monitored and sanctions imposed where necessary.**

IV. COUNTRY PROFILE: FOUNDATIONS FOR THE NATIONAL INTEGRITY SYSTEM

Curaçao is located in the Caribbean Sea, approximately 60 kilometres (35 miles) off the northwestern coast of Venezuela. The population is around 150,000. The official languages are Papiamentu, Dutch and English. Spanish is widely spoken.[10]

The first Europeans, led by the Spanish explorer – and lieutenant of Columbus – Alfonso de Ojeda, arrived in 1499 in Curaçao. By then Curaçao was inhabited by the Caquetio Indians. The island remained under Spanish control until the Dutch conquest of 1634. At the beginning of the 19th century the island Curaçao fell into English hands, but the Dutch once again took Curaçao into their possession in 1816. During the 17th and 18th century, the West Indian Company (WIC), a chartered company of Dutch merchants, established many trade posts in the West Indies, including Curaçao. Africans were enslaved from their homeland and transported to Curaçao, where they were sold to plantation owners from across the Americas. The remaining slaves fulfilled the labour needs on plantations and in the urban area they performed activities in households, in the trade and the construction sector (to build forts and houses). In 1863 slavery in the Dutch West-Indian colonies was abolished.

The country The Netherlands Antilles (1954-2010)

'Curaçao and subordinates', as the six-island group in the Caribbean Sea was called during the Dutch colonial period, left its colonial status behind in 1954. The islands became an autonomous entity within the Kingdom of the Netherlands, as part of the Netherlands Antilles consisting of six islands: Aruba, Bonaire, Curaçao, Saba, Sint Eustatius and Sint Maarten.[11] The Charter (*het Statuut*) of the Kingdom of the Netherlands[12] is the leading document in which the autonomy or self-governing of these islands is organised. The islands as a federation became responsible for their internal affairs, while nationality, foreign relations, defence and cassation were the jurisdiction of the Kingdom as a whole. In 1986 Aruba severed ties with the Netherlands Antilles and became an autonomous country within the Kingdom.

The country Curaçao (2010-)

The demand for more autonomy also increased in Curaçao. This resulted in a referendum in April 2005, whereby citizens of Curaçao could express themselves on the position of the island within the

[10] In the majority of households Papiamentu is spoken (78 per cent), followed by Dutch (9 per cent), Spanish (5 per cent) and English (6 per cent). Central Bureau of Statistics (CBS), Census 2011. (Willemstad: Central Bureau of Statistics Curaçao, 2005).

[11] The Kingdom of the Netherlands consisted of three constituent parts: the Netherlands, the Netherlands Antilles and Suriname. In 1975 Suriname separated from the Kingdom and became an independent republic.

[12] State Gazette of the Kingdom of the Netherlands, 1954, No. 503. The *Statuut* came into effect in 15 December 1954.

Dutch Kingdom. The majority, 68 per cent of the voters, opted for a 'special status'' or autonomy within the Kingdom.[13] A process of change in constitutional relations within the Kingdom of the Netherlands started. The conditions in order to be become an autonomous country were laid down in an Outline Agreement (*Hoofdlijnenakkoord).*[14] These conditions covered, inter alia, the judiciary and law enforcement, fiscal policies, financial management, and good governance. On 10 October 2010, the autonomous country of Curaçao came into being.[15] The new status means that Curaçao enjoys a high degree of autonomy on internal matters except for those mentioned in Article 3 of the Charter for the Kingdom of the Netherlands, for example maintenance of the independence and the defence of the Kingdom, foreign relations, Dutch nationality and regulation of the orders of knighthood, the flag and the coat of arms of the Kingdom.[16]

Foundations of the National Integrity System in Curaçao

Since the National Integrity System is deeply embedded in the country's overall social, political, economic and cultural context, a brief analysis of this context is presented here for a better understanding of how these context factors impact integrity on the whole. There are four different 'foundations' of the system: political- institutional foundations, socio-political foundations, socio-economic foundations, and socio-cultural foundations.

Political-institutional foundations

Score: 50

TO WHAT EXTENT ARE THE POLITICAL INSTITUTIONS IN THE COUNTRY SUPPORTIVE TO AN EFFECTIVE NATIONAL INTEGRITY SYSTEM?

While comprehensive laws exist to guarantee the basics of a democratic political process, in practice political institutions do not function effectively.

The Curaçao Constitution (*Staatsregeling*)[17] and other laws provide the basis of a democratic political process. The political system of Curaçao is a Parliamentary democracy and has held free elections at the national level since 1948. In practice, the system of proportional representation has always resulted in a coalition government. Although the pluralistic political and electoral system provides voters with a broad choice of diverse political parties, critics argue that democratic principles do not function well in Curaçao. In first instance they say that the competition among political parties is dominated nowadays by the image of the political leaders and the availability of campaign money, not by the ideology and the programmes of the political parties. Moreover, critics believe that the high number of uneducated and poor people, the 'have nots', give their vote to

[13] Twenty-three per cent voted for integration with the Netherlands, five per cent voted for independence, and four per cent opted for retaining the Netherlands Antilles.
[14] Outline agreement between the Netherlands Antilles, the Netherlands, Curaçao, Sint Maarten, Bonaire, Sint Eustatius en Saba '(*Hoofdlijnenakkoord),* 22 October 2005. In different documents which followed, the conditions were elaborated, for example: *Slotverklaring*, 2 November 2006, *Overgangsakkoord* 12 February 2007. *Toetredingsakkoord* 28 August 2007, *Slot Ronde Tafel Conferentie* 9 September 2010.
[15] State Gazette of the Kingdom of the Netherlands, 2010, No. 775, Charter for the Kingdom of the Netherlands (*below: Charter*). Also Sint Maarten became an autonomous country within the Kingdom of the Netherlands; the other islands became public entities of the Netherlands. The Dutch Kingdom consists now of four countries: the Netherlands (including Bonaire, Sint Eustatius and Saba), Aruba, Curaçao and Sint Maarten.
[16] Charter, 2010, No. 775.
[17] Constitution of Curaçao (*Staatsregeling van Curaçao*), Official Curaçao Gazette 2010, No. 86.

politicians who donate campaign promotion materials and promise favors.[18] Poverty is therefore an important condition for the survival of this political patronage system.[19] In the second place, critics argue that the electoral system does not function well in Curaçao. The identification of the voter is principally with the party leader and not with those who in Parliament will ultimately represent the voter. In addition, in recent years there have been a few occasions on which a coalition lost its majority in Parliament due to the fact that members left their political fraction to join the opposition (*zetelroof*). (Also refer to Chapter VII.1 Legislature.)

Since 2000 Curaçao has voted ten times for a government: six times for the Parliament of the former Netherlands Antilles, three times for the Parliament of the Island of Curaçao prior to its own autonomy, and once as the autonomous country of Curaçao.[20] During this period, a full four-year term has never been completed. In the same period (2000-2012) the Netherlands has had seven cabinets[21] with more than ten different ministers acting as minister of the interior and kingdom relations. So far, the new country Curaçao has had four cabinets. This political instability at the different levels has hampered efforts to instil a culture of good governance and anti-corruption.

Due to the small size of the island and the personal ties of ministers with the population, professional and personal roles are often intertwined. In the political culture, personal factors, such as family and neighborhood ties, are often more important than substantive and ideological factors. Moreover, having friends and family who are members of political parties can help in securing key positions in public administration and state-owned companies.[22] Likewise, such connections can help to obtain certain services and favours from government and state-owned companies. Without knowing the right people, it can take a lot of time and effort to get things done.[23] This dependency means that people in key positions in the public sector are not always held accountable by citizens for mismanagement and/or unlawful actions.

Civil rights are guaranteed in the Constitution[24] and other laws,[25] although those rights are not always protected. The US Department of State's 2011 Country Report on Human Rights states that Curaçao authorities believed that some migrant labourers may have been forced to work in construction, landscaping and shops. Moreover, the reports states that prison conditions are substandard in some respects, for example there is not sufficient capacity to separate facilities for juvenile offenders.[26] Another inspection report shows that victims of crime do not always get the support they need.[27] The ability of citizens to seek redress for the violation of their rights is often

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[18] Peter Verton, Good governance and political patronage (*Deugdelijkheid bestuur en politieke patronage*) in: *René Römer als inspirator* (Curaçao: University of the Netherlands Antilles, 2006) p.215 and Telegraaf, *Stanley Brown noemt onafhankelijkheid gekkkenwerk 'Wiels gevaarlijk projectiel'*, 27 October 2012.
[19] Obernon Nauta, Good governance in the West (*Goed bestuur in de West*), p.168 (Oisterwjk: Uitgeverij BOXPress, 2011), René Römer, *Beeldvorming en politiek* and James Schrills, *Emancipatie en onze politieke cultuur*, in: Emancipatie & Acceptatie, Curaçao en Curaçaoënaars (Amsterdam: Uitgeverij SWP, 2003).
[20] Gert J. Oostindie ed., Shared Kingdom *(Gedeeld Koninkrijk, De ontmanteling van de Nederlandse Antillen en de vernieuwing van de trans Atlantische relaties)* (Amsterdam: Amsterdam University Press, 2012), p.15-16.
[21] Cabinet Kok, Cabinet Balkenende I-II-III-IV, Cabinet Rutte I-II
[22] Hardy A. Huisden & Brede Kristensen (red), A new country Curaçao (*Een nieuw land Curaçao en alles wat daarbij komt kijken*) (Amsterdam: Caribpublishing, 2012/ B.V. Uitgeverij SWP Amsterdam), p.97.
[23] Eric R. de Vries, Speech Curaçao Bar (*Rechtsstatelijkheid, Een toespraak naar aanleiding van de installatie van mr P.E. de Kort tot lid van het GHvJNAA*.) via www.ordevanadvocaten.an see publications [accessed 10 January 2013].
[24] Constitution, Chapter 2.
[25] The country is a party to the European Convention on Human Rights and subject to the jurisdiction of the European Court of Human Rights (ECHR).
[26] United States Department of State, Country Reports on Human Rights Practices for 2011.
[27] Law Enforcement Council, The reporting process on Curaçao (*Het aangifteproces op Curaçao*), Inspection report of the Law Enforcement Council, May 2012, p.8.

undermined by the weakness of certain parts of the government. In general, citizens can seek redress by seeking judicial protection. In practice these procedures may be lengthy and expensive and for that reason not accessible to the majority of citizens.

To what extent there is freedom of speech in Curaçao is no simple question. On the one hand, there is a group of – often financially independent – people who feel free to express themselves, and there are numerous talk shows and call-in programmes on the radio in which people (albeit often anonymously) show their displeasure, sometimes in an aggressive manner, with current events in Curaçao. On the other hand, however, in a direct (public) confrontation, many people are generally cautious about giving their opinion because they fear restrictions on public services and employment opportunities, for themselves and their family.[28]

Socio-political foundations

Score: 25

TO WHAT EXTENT ARE THE RELATIONSHIPS AMONG SOCIAL GROUPS AND BETWEEN SOCIAL GROUPS AND THE POLITICAL SYSTEM IN THE COUNTRY SUPPORTIVE TO AN EFFECTIVE NATIONAL INTEGRITY SYSTEM?

Curaçao is a society struggling with cohesion; the fragmentation and polarisation of the society goes along social, economic, ethnic and even colour lines. Political parties/actors are mostly unable to overcome these divisions in the political sphere.

Curaçao is a culturally and ethnically diverse society, inhabited by over 40 nationalities. About 25 per cent of the total population was not born in Curaçao.[29] Certain ethnic groups have been present in Curaçao for many generations and have played an important role in economic, social and cultural life. Jews have been on the island since the beginning of the Dutch colonisation, and during more recent decades there have also been immigrants from the Netherlands, South Asia, China, the Middle East, Portugal, Suriname, and the English-speaking Caribbean.[30] During the years, minorities of Dutch, Jewish, Arabian, Portuguese and Indian descent have consolidated their own positions in the socio-economic structure. More recently, immigrants from Haiti, Venezuela and Colombia have held lower positions in the tourism and construction sectors. The increase of immigrants[31] has caused a certain amount of anti-foreigner sentiment, as some locals believe themselves to have been marginalised and squeezed between a (predominantly white) wealthy and influential elite and a large immigrant population. To create more possibilities for locals, in 2011 the political party *Pueblo Soberano (PS)* introduced an 80/20 ordinance in Parliament [32] whereby all companies in Curaçao should employ a minimum of 80 per cent locals and a maximum 20 per cent of non-locals.[33] Although the Council of State negatively advised the law[34] it passed through Parliament, but has not yet been enacted by the government.

[28] Valdemar Marcha and Paul Verweel, The culture of fear (*De cultuur van de angst*: *paradoxale ketenen van angst en zwijgen op Curaçao*) (Amsterdam:SWP 2002).
[29] CBS Census 2011.
[30] Rose Mary Allen, The complexity of national identity construction in Curaçao European Review of Latin American and Caribbean Studies 89, October 2010, p.119-120.
[31] In the past 10 years the population has grown by 15 per cent, as a result of natural growth but even more so as a result of immigration, CBS Census 2011.
[32] Initiative law proposal (*Zitting* 2919-2011-002).
[33] The exact definition of ‘local’ or ‘non-local’ is debatable.
[34] Advice of 11 May 2011, Council of State, no. RA/13-11LV.

The fragmentation and polarisation of the society has roots in the history of slavery. Both during and after the abolition of slavery there was interdependence based on an unequal power relationship (patronage). For a long time colour and race remained central to social mobility.[35] Today it seems that the society is mainly divided into 'haves' and 'have nots', and although society has become more diverse, economic wealth still often goes along with descent and colour.

Furthermore, the society is divided over the level of involvement of the Netherlands. The debate on constitutional reform led to a referendum, held on 15 May 2009. The electorate was asked to accept ('SI') or reject ('NO') the ongoing process of constitutional reform. Fifty-two per cent of voters approved the negotiated agreements between Curaçao and the Netherlands and 48 per cent disapproved. These results have been interpreted at the popular level as reflecting the polarised views regarding the influence of the Netherlands in local affairs.[36] In the eyes of many, the results of the referendum divided the society into a '*Si'* and a '*No'* camp, while others see it as a confirmation of a historical dichotomy, characterised by ethnicity and class.[37] Recently, political leaders have emphasised the importance of unity of the society.[38] Another division which is related to the point above concerns language. Until recently, all official documents were issued in Dutch. Recently more official political documents, for example the government programme, have been issued in Papiamentu. Moreover, there is a division between Papiamentu and Dutch language schools and between Papiamentu and Dutch language media.

There are different interest groups which try to mediate between society and the political decision makers, but the link between Curaçao society and the political system is somewhat weak due to the weakness of political parties and of civil society organisations. (Also refer to Chapter VII.10 Political Parties and Chapter VII.12 Civil Society). The level of citizen participation in political party activities is low. Young people in particular have a tendency to disassociate themselves from politics. Moreover, in recent years, the number of civil society organisations has grown, but their ability to influence politics is low due to a lack of a broad social base, trust and financial support. Unions, government and the private sector are united in the *Kolaborativo.*[39] This tripartite social dialogue platform includes the national and central representations of the unions, the *Association of Business of Curaçao (VBC)* and the *Chamber of Commerce and Industry*. It tries to serve as a link between society and the state, but with the changes in the political landscape in 2010 *Kolaborativo* experiences a lack of cooperation from the government.

Socio-economic foundations

Score: 50

TO WHAT EXTENT IS THE SOCIO-ECONOMIC SITUATION OF THE COUNTRY SUPPORTIVE TO AN EFFECTIVE NATIONAL INTEGRITY SYSTEM?

There are some serious concerns about the country's socio-economic situation. Curaçao faces significant challenges, particularly in terms of education, employment and poverty.

The economy of Curaçao is dominated by tourism and financial services. Other important economic sectors are oil refining and international trade, including trade through and in the economic zones in the seaport and the airport. As Curaçao is situated at the crossroads of major shipping routes,

[35] Allen, 2007:27.
[36] R. Allen, 210:118.
[37] Allen, 2010:119.
[38] 'We have to create unity' (*We moeten eenheid creëren*) 8 October 2012 via www.versgeperst.com [accessed 11 January 2013].
[39] Kolaborativo applies internationally formal dialogue strategies, as laid down by the International Labour Organization.

activities around the port such as ship repair and freight transshipment are also important. Curaçao has a reasonably well developed infrastructure (telecommunications, road, harbour, airport, electricity and water).

Curaçao's Gross Domestic Product (GDP) amounted to US$ 3.0 billion[40] in 2011. The island had in that year a per capita Gross National Product (GNP) of US$ 20,800. During the past five years, the economy grew by an average annual rate of 1.2 per cent, but it has recently suffered from the global recession, reflected by a contraction in real GDP of 0.4 per cent in 2011.[41] Despite the fact that the island enjoys a high per capita income compared with other countries in the region, the distribution of income in Curaçao is uneven and the cost of living is high. Twenty per cent of the households with the highest income receive half of the total income of all households in the country.[42] About 30 per cent of the population is living below the established poverty line.[43] According to a recent report by Unicef, women earn less than men and the majority of single parents may have more than one job in order to support the family. Despite this, there is no policy to assist women to fulfill their dual role as caregivers and guarantors of the household economy.[44]

The dismantling of the Netherlands Antilles was accompanied by a restructuring of the debt position of the islands. To reach a healthy financial start, the Netherlands assumed the national debt of the Netherlands Antilles (including Curaçao) to an amount of about €1.7 billion. At the same time (December 2008) a Board of Financial Supervision (CFT – *College financieel toezicht*) was installed to monitor the public financial administration. Although the financial sector in Curaçao fared relatively well during the financial crisis and Curaçao has a much more healthy debt situation than many other countries,[45] the country faces huge budgetary challenges. In July 2012, the government of Curaçao was instructed by the Council of Ministers of the Kingdom to improve financial management.[46] One concern relates to the suspension of donor support by the Netherlands. Since the 1980s, Curaçao has received subsidies from the Netherlands[47] to support the local economy, social and educational projects, cultural events, and so on. As a result of its newly-acquired country status, this financial support is suspended by 2012. Moreover, in 2019 the contract between the Curaçao government and the oil refinery will terminate, some regulations regarding the financial sector will expire and Curaçao will have to start paying back its debt to the Netherlands.[48]

There are also other developments that threaten the sustainability of Curaçao's economy in the long term. Firstly, there is a serious problem of secondary education dropouts in Curaçao: almost 40 per cent leave school without a diploma[49] and crime amongst youth is rising[50]. Secondly, the country suffers 'brain drain' in the age group 20-44 years due to lack of opportunities to study and work in Curaçao.[51] The proportion of highly educated citizens is relatively low. The proportion of young people aged 0-14 years has been halved and the proportion of elderly people (aged 65+) has tripled

[40] TI takes one billion to refer to one thousand million (1,000,000,000)
[41] Annual Report Central Bank Curaçao and Sint Maarten, 2011 (during the writing of this report, the annual report of 2012 was not yet available).
[42] Modus Statistic Magazine, Household Income Distribution in Curacao, Volume 8, nr. 1.
[43] UNDP, First Millennium Development Goal Report, Curaçao and Sint Maarten 2011.
[44] Unicef, The Situation of Children and Adolescents in Curaçao: Key findings and recommendations, 2013.
[45] Lecture by Age Bakker, chair of the Board of Financial Supervision (Cft), University of the Netherlands Antilles, 28 January 2013.
[46] State Gazette of the Kingdom of the Netherlands, No. 338. Act of 13 July 2012.
[47] SONA, previously known as the Netherlands Antilles Development Foundation.
[48] Presentation E. Tromp, Annual Report Central Bank Curaçao & Sint Maarten 2011, 6 July 2012.
[49] G. Narain, The boy problem, gender differences in educational careers in the Netherlands Antilles, UNESCO, 2009.
[50] Korps landelijke politiediensten KLPD, Crimeanalyses Curaçao 2008, (*Criminaliteitsbeeld analyse Curaçao 2008)* 2009.
[51] CBS Census 2011.

in the past 50 years. This implies that rising health care and pension costs will have to be funded for an aging population by an ever-shrinking workforce. Thirdly, the unemployment rate is relatively high: 10 per cent in 2011 (and youth unemployment as high as 30 per cent).[52] While women excel in the educational environment, more women than men are unemployed.[53]

Fortunately there are also reasons to be optimistic about the economic future of Curaçao. Since the beginning of 2013, the transition Cabinet-Hodge has taken important measures to restore fiscal stability. Once the budget is balanced, government can borrow for capital expenditures for infrastructure at low interest rates due to the 'triple A status' of its Kingdom partner, which would give a boost to the economy.[54]

Furthermore, a recent report on long-term economic development in Curaçao suggests that average annual rates above 2.5 per cent or 3 per cent for Curaçao's long-term GDP can be achieved – by moving to higher skills associated with higher productivity of labour force and improving 'investment attractiveness' and the business environment – as observed in other benchmark countries, for example Trinidad & Tobago, Barbados, Bahamas and Singapore.[55]

Socio-cultural foundations

Score: 25

TO WHAT EXTENT ARE THE PREVAILING ETHICS, NORMS AND VALUES IN SOCIETY SUPPORTIVE TO AN EFFECTIVE NATIONAL INTEGRITY SYSTEM?

Mistrust, a lack of responsibility and a culture of fear are not uncommon in Curaçao. However, awareness of the importance of good governance is growing.

Due to multiculturalism in the Curaçaoan society, it is difficult to speak about one predominant culture. Nevertheless there are some values and norms that are shared by at least a substantial portion of the population. In general the culture of Curaçao is inward-looking which is expressed in a strong identification with the territory and a sense of 'difference' from others in the world.[56] Some observers consider that this outlook obstructs development.[57]

Curaçao is shaped to some degree by a history of conquest, colonialism, slavery, the Roman Catholic Church, the Royal Dutch Shell and donor relations.[58] These developments have caused a tradition of patronage, concentration of power and resistance.[59] As a result, there is a significant lack of interpersonal trust and a culture of fear. This gives people in high-ranking positions a great deal of

[52] Ibid.
[53] Unicef, 2013.
[54] Lecture by Age Bakker, chair of the Board of Financial Supervision (Cft), University of the Netherlands Antilles 28 January 2013.
[55] TAC, Applied Economic & Financial Research, Strategies for sustainable Long Term Economic Development in Curaçao, 12 May 2012, p.6.
[56] Gert Oostindie ed., Small scale and quality of governance, 2006:15-16.
[57] Speech E. Tromp: *The state of Curaçao's economy – developments and vulnerabilities*, Willemstad, 20 May 2011.
[58] Verton, 2006:213.
[59] Allen, 2007:27.

power, which is not conductive to integrity and transparency.[60] Furthermore, there is a lack of responsibility, and very few people in government service or otherwise dare to make decisions.

On the positive side, over the last 20 years there has been an increase in the attention paid to good governance and especially to good corporate governance. Several training programmes in this area have been conducted. 'Integrity' and 'corruption' have been dominant topics in political and public debate in Curaçao. The number of investigations into (possible) cases of corruption has increased and several politicians and officials have been convicted of fraud[61] or corruption[62]. Moreover, in recent years there have been frequent debates about roles and responsibilities, concerning good governance between the Dutch Caribbean and the Netherlands.[63] These discussions continued after Curaçao acquired in October 2010 its new status as an autonomous country within the Kingdom of the Netherlands.

On the negative side, although good governance received more attention in certain circuits, in general there is a low level of awareness of the importance of good governance. The idea that good governance is of vital importance for Curaçao is not propagated by every executive (*bestuurder*). The awareness lacks balance between the self-interest (the 'me') and the interest of the society (the 'we'). Often the 'me' does not understand that the 'we' is also in their own self-interest. For instance, in non-extreme cases of corruption, an acceptance of different forms of misuse of power for personal benefit exists.[64] There are examples where public officials with criminal backgrounds or suspected offences have not been removed.[65] At this stage, little is known about the nature, extent and costs of corruption.The actual negative impacts of corruption and its effects on the development of Curaçao and the daily life of its citizens are rarely part of the public debate.

Fortunately, these topics are now on the agendas of different key institutions and sectors in Curaçao, inter alia, the government, political parties, civil society organisations and business. This forms the basis for an emerging discourse about the importance of good governance for the future of the country. Against this background, at the beginning of 2012 the government of Curaçao approached Transparency International to carry out a National Integrity System assessment in Curaçao.[66]

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60 Marcha, 2003.
61 'Fraud' lacks a description in the Penal Code of Curaçao. One considers it a criminal offence when referring to the activity, for example theft, embezzlement, deception.
62 P.C.M. Schotborgh-van de Ven, 'The "route of reproach": on the origins of fraud and corruption in the Caribbean art of the Kingdom' (*De 'verwijtenroute': over de achtergronden van fraude en corruptie in het Caribische deel van het Koninkrijk*), Justitiële verkenningen, Vol. 35, No. 5, 2009, p.86.
63 Gert J. Oostindie ed., Shared Kingdom *(Gedeeld Koninkrijk, De ontmanteling van de Nederlandse Antillen en de vernieuwing van de trans Atlantische relaties)* (Amsterdam: Amsterdam University Press, 2012:69-70).
64 Evaluation Co-operative programme for Administrative Development Netherlands Antilles, 2002-2006 (*Evaluatie samenwerkingsprogramma bestuurlijke ontwikkeling Nederlandse Antillen 2002-2007*), ECORYS Nederland BV, Rotterdam, 29 June 2007, p.19. (Below: Evaluation SBO 2002-2006.)
65 Verton, 2006:213.
66 Terms of Reference for the Implementation of Transparency International's National Integrity System Assessment in Curaçao, 20 March, 2012.

V. CORRUPTION PROFILE

The first examples of corruption in Curaçao that can be found in the literature go back to the 17th century.[67] The trade between Europe and the Caribbean, driven by the West Indian Company, went along with illegal trade with the Spanish and French enemy and smuggling of, for example, stockfish wood, lime, salt, alcohol and weapons. Governance and judiciary were in one hand, patronage, nepotism and slavery were considered to be normal. Three centuries later, Curaçao became a transit area between drug-producing and drug-consuming countries. The well-connectedness with the other countries in the Kingdom of the Netherlands played an important role in this regard. Moreover, in general in the Caribbean, the long coastlines of the islands, the porous borders and limited law enforcement capacity, poverty and unemployment have facilitated illegal trafficking activities.[68] Illegal trade (such as the drugs trade) has a powerful corrupting force on the entire country, and in particular can have a corrupting effect on government officials, politicians, financial service providers, police and custom officers. As in other countries, police investigations in Curaçao show that in the majority of drugs cases, corruptive contacts with officials and/or civil servants exist.[69]

Although as a 'frontier society' Curaçao has a long history of corruption, for a long time there had been no openness in talking and writing about the subject. This situation changed at the end of the 20th century. The number of investigations into corruption cases increased and 'corruption' was reported on more and more in the media. One well-known investigation was called the 'Cliffhanger investigation' (2003), which concerned three state-owned companies. Several politicians and officials were convicted of fraud, embezzlement and/or corruption. In the same period a public prosecutor with expertise in the field of financial crime was appointed, the special police force (*Landsrecherche*) became operational and a special fraud team, the Bureau for Financial Investigations (*BFO-team*), was established. Over the past 15 years, there have been several criminal investigations and convictions of politicians and high officials.

However, empirically-based research on corruption in Curaçao is very limited, in particular with regard to international surveys and ratings which include Curaçao. Nevertheless, some studies are available.

Perceptions of corruption

In 2004, public perceptions of corruption in Curaçao were measured with the Transparency International 'Global Corruption Barometer'.[70] When asked about their first choice institution from which to eliminate corruption, 50 per cent of the Curaçaoan respondents answered political parties, 11 per cent the judiciary and 10 per cent the education system. Respondents were not very optimistic about the levels of corruption in the future. Approximately 50 per cent of respondents expected corruption to decrease in the next three years. Almost half of the respondents (48 per cent) believed that corruption would increase a little or a lot. The majority of respondents indicated

[67] Marjo Nederlof, Eerlijckman 1680-1713, In service of the army of State and the West-Indian Compagnie (*In dienst van het Staatse leger en West-Indische Compagnie*) (Curaçao: De Curaçaose Courant, 2008).
[68] International Narcotics Control Board, Report of the International Narcotics Control Board for 2010 International Narcotics Control Board (New York: United Nations, 2010), p.56.
[69] Security Plan Curaçao (*Plan Veiligheid Curaçao, naar een veilige voor de burgers van Curaçao*) (s.l.: December 2008), p.31.
[70] CBS, Perception of corruption: Bonaire and Curaçao 2004 (*Perceptie van corruptie: Curaçao en Bonaire 2004*) (Willemstad: Central Bureau of Statistics Curaçao, 2005).

they believed corruption had a very negative impact on political and cultural life and values in society.

In 2005 public perceptions of investors in the Netherlands Antilles were measured.[71] More than half (57.5 per cent) of the interviewed investors[72] responded that corruption in practice is an obstacle to doing business. At the same time, the overwhelming majority responded 'never' to have paid a bribe, 'an additional fee', to conduct business. According to the report, investors in Curaçao expressed their concern on anti-competitive practices, mostly in the area of public procurement. [73]

In 2009 a project of researchers, primarily from the World Bank, on World Governance Indicators was accomplished in a number of CARICOM[74] countries.[75] The project relies mainly on existing surveys among business people and firms, non-governmental organisations, risk analysts and citizens/households. As a consequence, the data primarily concern the perception of the reputation of countries, which might be different from the actual state of affairs. The World Governance Indicators project reports composite measures of six dimensions of governance: voice and accountability, political stability and absence of violence, government effectiveness, regulatory quality, rule of law and control of corruption.

The Bahamas score best on integrity, Aruba best on democracy and lawfulness, and Barbados best on effectiveness. The dimension 'control of corruption' captures perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as 'capture' of the state by elites and private interests. The results on this aspect show a decrease of 10 per cent of 'control of corruption' in 2010 compared to 2005 in the Netherlands Antilles.[76] Overall, Barbados, Aruba and the Bahamas score best. The Netherlands Antilles and Trinidad and Tobago are performing second best, and Belize, Jamaica and Suriname follow. Guyana and Haiti are performing worst.

Research on corruption

Although their number is very limited, in recent years a few studies on criminality in Curaçao have been conducted. To a certain degree these studies do say something about the nature and extent of corruption.

In 2007, the *Baseline study on criminality in Curaçao*[77] was published. The report covers various types of criminality in an extensive way, but also notes a lack of information on integrity and corruption. According to the report, due to the fact that these offences are registered under a more

[71] Organisation for Economic Co-operation and development (OECD), Investment Policy Reviews, Caribbean Rim, Netherlands Antilles, 2005.
[72] 129 companies in Curaçao were included in the survey.
[73] OECD, 2005: 48
[74] The Caribbean Community (CARICOM) is an organisation of Caribbean nations and dependencies. Its main purposes are to promote economic integration and cooperation among its members.
[75] D. Kaufmann, ed., *Governance matters: Volume 8. Aggregate and individual governance indicators, 1996-2008* (June 29, 2009). World Bank Policy Research Working Paper No.4978.
[76] Presentation Leo Huberts, University of the Netherlands Antilles, Curaçao 18 January 2012. See also: Leo Huberts, Good governance in the Caribbean, Reflections on good governance, integrity and corruption in CARICOM Countries: State of the art and beyond, SIDS-Conference Curaçao 4-7 March 2011.
[77] W. Faber et al, Baseline study, Criminality and law enforcement Curaçao and Bonaire (*Baselinestudy. Criminaliteit en rechtshandhaving Curaçao en Bonaire*) (Oss/Amsterdam: Faber Organisatievernieuwing BV/Vrije Universiteit Amsterdam, June 2007).

general category of crime, there is no clear picture of the extent of the corruption and integrity problem in Curaçao.[78]

Curaçao's special police force established as a unit for the former Netherlands Antilles in 1996, and dedicated to investigate possible criminal conduct of government officials and public servants, registered nine bribing cases in the period 1997-2005.[79] In 2012, the special police force registered 16 investigations into integrity issues of civil servants in 2012, of which only one was a bribery case.[80] Preliminary findings of an academic study report about 10 corruption court cases in appeal between 2008 and 2011 in Curaçao.[81] The majority of those cases involved suspected corruptive activities by civil servants working in the police force, customs and the prison. In one case, the corruptive act involved a decision of a high-level government official.

Another study, the *Plan Veiligheid Curaçao* 2008[82] also underscored the fact that there are few quantitative data on corruption. The researchers of this study traced 14 corruption-related cases in the databases of the Public Prosecutor's Office, over the entire period between 1997 and 2005, but concluded that 'the available (hard) knowledge is limited, fragmented and, according to experts, only the tip of the iceberg'.[83]

The *Crime Analysis of Curaçao 2008*[84] confirms the lack of information about the extent of corruption.[85] According to those interviewed for this analysis, corruption in Curaçao is not a systemic feature of departments of the administration, but concerns 'individual missteps'.[86] A public prosecutor interviewed estimates that there have been some 50 bribery cases involving civil servants over the past 10 years. Two types of corruption are mentioned as the most common in practice: support in drug transactions and document fraud.[87] The political aspect of corruption cases is also underscored in the study, and illustrated by reference to the offering of jobs, permits and contracts to secure political support and finances for political campaigns.[88] According to the *Crime Analysis*, those practices result in too much dependency of high officials and politicians on financiers and voters, which undermines their critical stance and their ability to act if they need to address irregularities or enforce compliance.[89]

An overall summary of the corruption profile of Curaçao, then, should take in account that little research has been done regarding the levels, forms, types, manifestations and location of corrupt practices. Due to a lack of information about the nature and extent of corruption, there is a gap between the perception of corruption and the number of cases actually being prosecuted. Another gap concerns the political and media attention paid to integrity (or the lack thereof) in the public sector, compared to the attention given to that subject in the private sector. The latter is much lower on the political agenda in Curaçao and there is little public and political involvement to secure integrity in the business sector.

As will be discussed in the relevant chapters of the report, allegations of corruption in Curaçao are often speculative. As long as they remain assertions without proof, they damage the image of people and institutions, and create great unrest and a negative image of Curaçao. On the other

[78] Ibid. p. 287-288.
[79] Ibid. 287.
[80] Annual report *Landsrecherche*, 2012, p.9.
[81] P.C.M. Schotborgh-van de Ven, Phd study in progress, The causes of fraud and corruption in the Dutch Caribbean.
[82] KLPD, Crime analyses of Curaçao 2008 (*Criminaliteitsbeeld analyse van Curaçao 2008)* (Zoetermeer: Korps Landelijke Politiediensten, Dienst IPOL, 2009).
[83] *Plan Veiligheid Curaçao*, 2008: 31.
[84] KLPD, 2009.
[85] Ibid.: 136.
[86] Ibid.: 137.
[87] Ibid.: 137.
[88] Ibid.: 154.
[89] Ibid.: 140-143.

hand, some cases published in recent years suggest that officials have been involved in serious corruption-related cases. This in itself also undermines the credibility and legitimacy of the political and administrative system and is a threat to the sustainability of Curaçao.

VI. ANTI-CORRUPTION ACTIVITIES

This chapter provides a brief overview of anti-corruption reforms and activities that have had a direct impact on Curaçao's National Integrity System as it stands now.

Anti-corruption measures

Curaçao introduced a 'good governance' policy at the end of the last century. The basis for the policy is the report *Konfiansa* (1999)[90] and the Policy and Administration Instruments Project (*Project Beleids- en Beheersinstrumentarium – BBI)*. The recommendations listed in *Konfiansa* were geared towards improving transparency, responsiveness and accountability and referred to the concept of good governance as included in Article 43.1 of the Charter of the Kingdom of the Netherlands (*Statuut*). The goals of the Policy and Administration Instruments Project (BBI) were formulated in more instrumental terms, and focused on technical, administrative, organisational and human resources conditions.[91]

A few years later, the Co-operative Programme for Administrative Development (*Samenwerkingsprogramma Bestuurlijke Ontwikkeling – SBO* 2002-2007)[92]was implemented to further contribute to the development of good governance. The total budget of the programme amounted to more than NAf[93] 100 million, that is, about US$ 56 million.[94] The programme focused on the reinforcement and improvement of the quality of the public administration in the Netherlands Antilles. This programme was followed by another project, the Project Institutional Reinforcement Administration *(Institutionele Versterking Bestuurskracht – IVB* 2008-2012), the aim of which was good governance, anchored in the organisations of Pais Kòrsou, with measurable results and visible for the society. The *IVB* 2008-2012 programme included the intention to introduce an 'Independent Integrity Office' in Curaçao, a registration point or hotline for integrity issues (*Meldpunt Integriteit*). The functions of this office were to be registration, investigation and the provision of advice on integrity issues, broadly defined and including but not restricted to corruption.[95] Between 2007 and 2009, the Island Government of Curaçao cooperated with the Bureau Integrity Amsterdam[96] from the Netherlands. The Bureau shared its knowledge and expertise and conducted several activities in Curaçao,[97] for example, the design of different integrity policies for the Island Administration and the Police. Recently, the government did conclude a new cooperation agreement with the city of Amsterdam, the scope of which includes integrity issues.[98]

Another major programme, the Social Economic Initiative *(Sociaal Economisch Initiatief – SEI)* also included projects geared towards good governance. The total budget of the Project Institutional

[90] Konfiansa, administrative improvement and integrity (*Konfiansa, bestuurlijke verbetering en integriteit*), Bureau Constitutional Affairs, February 1999.
[91] Evaluation Co-operative programme for Administrative Development Netherlands Antilles, 2002-2006 (*Evaluatie samenwerkingsprogramma bestuurlijke ontwikkeling Nederlandse Antillen 2002-2007*), ECORYS Nederland BV, Rotterdam, 29 June 2007, p.19. (Below: Evaluation SBO 2002-2006.)
[92] The SBO programme was a co-production of the Netherlands and the Netherlands Antilles and derived subsidies from USONA. In Chapter 5 a summary of the SBO programme can be found.
[93] NAf stands for Netherlands Antillean guilder.
[94] Ecorys, Evaluation SBO 2002-2006:19.
[95] USONA Project proposal 2009, Sustaining the integrity and service mindedness of government, 2010-2012 (*Verankering van de Integriteit en Klantgerichtheid van de overheid (EGC), 2010-2012*), p.10.
[96] Cf. the website of the Bureau Integrity Amsterdam, via www.amsterdam.nl/gemeente/organisatie-diensten/integriteit-0/ [accessed 8 June 2013].
[97] Cooperation agreement Island Territory Curaçao and the municipality Amsterdam (*Overeenkomst tot samenwerking tussen het Eilandgebied Curaçao en de gemeente Amsterdam*), 30 August 2007.
[98] 'Cooperation Curacao and Amsterdam prolonged' (*Samenwerking Curaçao en Amsterdam verlengd*), 2 May 2013, via www.kkcuracao.com [accessed 8 June 2013].

Reinforcement Administration (IVB) and the Co-operative Programme Economic Initiative (SEI) as of 1 January 2011 amounted to approximately NAf 84 million, that is, about US$ 47 million.

So far, the government's initial programmes (*SBO* 2002-2007and *IVB* 2008-2012), as described in the above, have only been partly implemented in practice. The programmes and timetables have been revised several times. And although several activities were undertaken at different points in time and in different ministries, an overall strategy, coordination and monitoring has been lacking. (Also refer to Chapter VII.4 Public Sector.) Moreover, it has also proven difficult to measure the progress made in terms of the implementation of the activities undertaken, largely due to the lack of a set of quantifiable goals and the absence of (registered) results.[99] Also, not all Dutch development funds made available to conduct activities to improve governance within the public sector in Curaçao, were made use of. Because the money was not spent in the projected time frame, part of the funds were no longer available.

Civil society and business

Curaçao has a limited number of civil society organisations that have worked actively and continuously on corruption-related issues in recent years. Civil society organisations in Curaçao do seek to influence the formulation of government policies (including anti-corruption policies) and are active in holding the government to account, but are not always successful (See Chapter VII.12 Civil Society).

For more than 10 years now, also in light of international developments, corporate governance has had the attention of the business sectors which are under supervision of an authority. A limited number of business associations publicly call on the government to fight corruption. (See Chapter VII.13 Business).

Legal framework

Over the last decade, Curaçao's legal anti-corruption framework has been strengthened.

A number of international conventions against corruption have been signed by the Kingdom of the Netherlands, although not all were ratified on behalf of Curaçao.

For instance, the Civil Law Convention on Corruption (Strasbourg, 1999) has been ratified on behalf of Curaçao. It requires countries to ensure a legal framework which provides for effective remedies for persons who have suffered damage as a result of acts of corruption, to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage.[100]

In 2010, the Netherlands Antilles acceded to the Statute of the Group of States against Corruption, GRECO (Strasbourg, 1999), which, after the change of constitutional relations, continues to apply to Curaçao.[101] GRECO was established in 1999 by the Council of Europe to monitor states' compliance with the organisation's anti-corruption standards. Its objective is to improve the capacity of its members to fight corruption by monitoring their compliance with anti-corruption standards of

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[99] Ecorys, Evaluation SBO 2002-2006 and Ecorys, Mid-term evaluation IVB-Curaçao (*Mid-term evaluatie IVB Curaçao*), 17 August 2011.
[100] Civil law convention on corruption, 4 November 1999. Ratification on 17 December 2007 for the Netherlands and the Netherlands Antilles, Tractactenblad 2008, No.27.
[101] Statute of the Group of States against corruption (GRECO), 5 May 1998. Accession on 18 December 2001 for the Netherlands, and on 16 July 2010 for the Netherlands Antilles, Tractatenblad 2002, No.13 and Tractatenblad 2010, No. 231. Also see Tractatenblad 2010, No.323.

the Council of Europe. The group helps countries to identify deficiencies in national anti-corruption policies, prompting the necessary legislative, institutional and practical reforms. GRECO also provides a platform for the sharing of best practices in the prevention and detection of corruption.[102]

On the other hand, the Criminal Law Convention on Corruption (Strasbourg, 1999)[103] and the additional Protocol[104] was signed by the Kingdom of the Netherlands, but has not yet been ratified on behalf of Curaçao. This convention requires countries to establish criminal and other offences to cover a wide range of acts of corruption if these are not already crimes under domestic law.

Moreover, the United Nations Convention against Corruption (New York, 2003)[105] and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OESO-Convention, Paris 1997)[106] have not yet been ratified on behalf of Curaçao. The first convention is, inter alia, dedicated to prevention, with measures directed at both the public and private sectors. These include model preventive policies, such as the establishment of anti-corruption bodies and enhanced transparency in the financing of election campaigns and political parties.[107] The second convention, the Anti-Bribery Convention, establishes legally-binding standards to criminalise bribery of foreign public officials in international business transactions, and provides for a host of related measures that make this effective. Thus, this international anti-corruption instrument focuses on the 'supply side' of the bribery transaction.[108]

Currently, the Government of Curaçao is working on finalising the relevant legislation needed for the Kingdom of the Netherlands to ratify these treaties for Curaçao. An important step in this process was the introduction of a new Penal Code in 2011.[109] A new Code of Criminal Procedure, which is, for example, important to ratify the United Nations Convention against Corruption, is in the making.

The new Penal Code contains dedicated chapters on crimes and offences committed by civil servants, ministers, members of Parliament and judges in their official capacity. Punishable offences include criminal offences such as bribery, abuse of authorities, extortion, and fraud,[110] as well as lesser offences such as making public confidential information or withholding government property.[111] Perpetrators of public bribery can be sentenced for a maximum of two, four or six years of imprisonment and be fined NAf 25,000 (US$ 13,800), depending on the exact type of corruption. The most severe punishment concerns a corrupt judge, with a maximum imprisonment of nine years and a maximum fine of NAf 100,000 (US$ 55,200). Private-to-private bribery is also outlawed in the new Penal Code[112] and can be sentenced by a maximum of three years' imprisonment and a fine of NAf 25,000. (US$ 13,800).

In addition to these changes in criminal law, important steps have been taken to strengthen the legal framework towards good governance of the public sector. In the run-up to the constitutional changes

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102 Council of Europe, www.coe.int/t/dghl/monitoring/greco/general/3.%20what%20is%20greco_EN.asp [accessed 6 June 2013].
103 Criminal law convention on corruption, 27 January 1999. Ratification on 11 April 2002 by the Kingdom of the Netherlands for the Netherlands, Tractatenblad 2002, No.109. Also see Tractatenblad 2010, No.322.
104 Additional protocol to the criminal law convention in corruption, 15 May 2003. Ratification on 16 November 2005 by the Kingdom of the Netherlands for the Netherlands, Tractatenblad 2006, No.4. Also see Tractatenblad 2010, No.323.
105 United Nations Convention against Corruption, New York, 31 October 2003. Ratification on 30 November 2006 by the Kingdom of the Netherlands for the Netherlands, Tractatenblad, 2006, No.266. Also see Tractatenblad 2011, No.32. .
106 Convention on combating bribery of foreign public officials in international business transactions, 17 December 1997. Ratified by the Kingdom of the Netherlands for the Netherlands on 12 January 2001, Tractatenblad 2001, No.50. Also see Tractatenblad 2011, No.196.
107 UNODC, www.unodc.org/unodc/en/treaties/CAC/ [accessed 6 June 2013].
108 OECD-Convention, www.oecd.org/corruption/oecdantibriberyconvention.htm [accessed 6 June 2013].
109 Penal Code, Country Gazette 2010, No.48.
110 Penal Code, Book 2, Title XXVIII.
111 Penal Code, Book 3, Title VIII.
112 Penal Code, Book 2, Title XXV.

in 2010 various new laws were introduced. An example of such a law is the introduction of the corporate governance ordinance,[113] together with a corporate governance code[114] and corporate governance advisor (*SBTNO – Stichting Bureau Toezicht en Normering*).[115] SBTNO advises government on the application of the corporate governance provisions related to appointment and dismissal procedures of board members, including profiles functions. SBTNO also advises the government on issues related to dividend policies and the buying and selling of bonds of public entities. (See Chapter VII.4 Public Sector.)

Another significant improvement concerns the revision of the country ordinance Legal and material rights and obligations of civil servants (*Landsverordening Materieel ambtenarenrecht*).[116] Most notably, the regulations now include provisions to cover conflict of interest and gifts as well as provisions for whistleblowing on suspected integrity breaches, including bribery and abuse of authority. (See Chapter VII.4 Public Sector.)

Another law that should not go unmentioned is the country ordinance Finances political groups.[117] It regulates the acquisition of financial means as well as the financial administration of political groups in order to advance the integrity of political groups. (See Chapter VII.10 Political Parties.)

Importantly, also, in October 2012 new regulations to protect the integrity of (candidate) ministers[118] were adopted to replace earlier ones. (See Chapter VII.2 Executive.) Under these new, more strict regulations, before a candidate is to be recommended for office, several investigations are to be conducted at the request of the formateur. The legislation also contains several provisions related to business interests and additional functions. (See Chapter VII.2 Executive.)

Although those legislative changes, amongst others, are important improvements and do contribute to the strengthening of the country's overall anti-corruption framework, some of the laws still contain gaps and/or are not applied consistently in practice. This will be discussed in the relevant chapters of the report.

[113] Island ordinance Corporate governance (*Eilandsverordening Corporate governance*), Official Curaçao Gazette 2009, No.92,

[114] Island Decree Code corporate governance Curaçao (*Eilandsbesluit Code corporate governance Curaçao*), Official Curaçao Gazette, 2009, No.96.

[115] Island ordinance Corporate governance, Article 4.

[116] Country ordinance Legal and material rights and obligations of civil servants (*Landsverordening materieel ambtenarenrecht*), Official Curaçao Gazette 2010, No.87.

[117] Country ordinance Finances political parties (*Landsverordening Financiën politieke partijen*), Official Curaçao Gazette 2010, No.87.

[118] Country ordinance Integrity (candidate) ministers (*Landsverordening Integriteit (kandidaat-) ministers*), Country Gazette 2012, No.66.

VII.1 LEGISLATURE

STRUCTURE AND ORGANISATION

Before the change in constitutional relations, Curaçao had its representatives in the Parliament of the Netherlands Antilles. It also had its own local representative body, the Island Council (*Eilandsraad*). In October 2010, the Island Council was dissolved and its 21 members, elected in the election of August 2010, made up Curaçao's first Parliament (*Staten*). This Parliament is to represent 'the entire people of Curaçao'[119] Constitutionally, Parliament has two main tasks. Parliament is to adopt legislation together with government, and Parliament is to scrutinise the work of the government when executing its legally-granted powers.[120]

The present Parliament is a 21-seat, single-chamber body elected every four years, barring early dissolution.[121] The general principles of the authorities, responsibilities and tasks of Curaçao's Parliament are set out in the Constitution, while more specific rules are laid down in the parliamentary Rules of Procedure.[122] The latter is Parliament's internal regulation, binding Parliament and members of Parliament, but without legal force for third parties, such as ministers.[123]

Members of Parliament elected on the basis of the same electoral list are considered to be members of one and the same parliamentary group (*fractie*). Individual members of Parliament may, however, step out of those groups and make up new groups or join another group.[124] Parliament convenes in plenary sessions in which it takes its formal decisions, as well as in the preparatory Central Committee, equally comprised of all members of Parliament.[125] Parliament also has several standing committees to facilitate oversight of the different ministries, as well as one for Kingdom Affairs and Interparliamentary Relations.[126] Other committees are the committee to investigate the credentials of incoming members of Parliament (*Geloofsbrieven*) and the Domestic Committee (*Huishoudelijke Commissie*).[127] Parliament's new Rules of Procedure now also explicitly mention the '*College van Senioren*', an advisory body whose members are the chairpersons of the groups represented in Parliament.[128]

In October 2012, the first election for the Curaçao Parliament was held. The parties elected in Parliament were *Pueblo Soberano* (PS) with five seats, *Movementu Futuro Korsou* (MFK) with five seats, *Partido Alternativa Real* (PAR) with four seats, *Partido pa Adelanto i Inovashon Soshal*

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[119] Constitution of Curaçao (*Staatsregeling van Curaçao*), Official Curaçao Gazette 2010, No.86, Article 39.
[120] Ibid., Chapters 4 and 6.
[121] Ibid., Articles 40 and 41.
[122] Country decree Publication Rules of Procedure Parliament of Curaçao (*Landsbesluit tot openbaarmaking van de Beschikking van de 10de oktober 2010 van de Staten van Curaçao, houdende vaststelling van de herziene versie van het Reglement van Orde voor de Staten van Curaçao*), Country Gazette 2012, No.50.
[123] Council of State, 'RvA No. RA/14-12-DIV Request to the Council of State for advice on the provision of information to Parliament by public entities (limited liability companies, foundations and legal persons instituted by public law)' (*Verzoek aan de Raad van Advies om advies inzake verstrekking van inlichtingen aan de Staten door overheidsentiteiten (naamloze vennootschappen, stichtingen en bij wet ingestelde rechtspersonen)*) (Curaçao: Council of State, 20 November 2012a).
[124] Rules of Procedure for the Parliament of Curaçao (*Landsbesluit van de 8ste augustus 2012, no.12/3799, tot openbaarmaking van de beschikking van de 10de oktober 2010 van de Staten van Curaçao, houdende vaststelling van de herziene versie van het Reglement van Orde voor de Staten van Curaçao*), Country Gazette 2012, No.50, Articles 14 to 16.
[125] Rules of Procedure, Article 29.
[126] Ibid., Article 45.
[127] Ibid., Article 3.
[128] Ibid., Article 11 to 13, and the explanatory memorandum on those articles.

(PAIS) with four seats, *Partido MAN* (MAN*)* with two seats and *Partido Nashonal di Pueblo* (PNP) with one seat.[129] This Parliament convened on 2 November 2012.[130] On 31 December 2012, the Cabinet-Hodge was installed, based on a coalition agreement (*regeerakkoord*) of PS, PAIS, PNP and Mr. Glenn Sulvaran, an independent member of Parliament who left the PAR group on 16 November 2012. This cabinet was succeeded by the Cabinet-Asjes on 7 June 2013, a cabinet based on the same coalition partners. At the time of writing, the groups of MFK, PAR and MAN make up the opposition. (Also refer to Chapter VII.2 Executive.)

Up to until recently, Curaçao had never witnessed an assassination of a member of Parliament. This dramatically changed when on 5 May 2013, the political leader of Curaçao's then largest political group, *Pueblo Soberano*, and one of Curaçao's 21 members of Parliament, Mr. Helmin Wiels, was murdered. At the time of writing, it is not publicly known who killed him, who – if anyone – ordered to do so and what motivated the murder. What *is* known is that a member of Parliament is no longer able to perform his duty as an elected official, representing the people of Curaçao. In that sense, on 5 May 2013, (an) external actor(s) intolerably interfered with the proper functioning of Parliament. However, because at the time of writing little is known about the true course of events, the assessment that follows focuses on events before 5 May 2013.

ASSESSMENT

Capacity

Resources (law)

Score: 75

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE THAT PROVIDE THE LEGISLATURE WITH ADEQUATE FINANCIAL, HUMAN AND INFRASTRUCTURE RESOURCES TO EFFECTIVELY CARRY OUT ITS DUTIES?

Parliament is to manage its own administrative office and has a large say in determining its own budget. The legal framework regulating financial provisions of members of Parliament, however, is not yet in place.

The Constitution provides for the appointment of the secretary general of Parliament (*Griffier*) by Parliament itself.[131] The secretary general is head of Parliament's Administration (*Griffie*), the administrative office supporting Parliament, supervised by the Domestic Committee.[132] Parliament's Administration is responsible for, among other things, the preparation of and reporting on parliamentary sessions and committee meetings, advice on drafting motions, amendments and initiative bills as well as advice related to Parliament's dealings with draft legislative proposals of

[129] Final results of the elections of Friday 19 October 2012 (*Definitieve uitslag van de verkiezingen van vrijdag 19 oktober 2012*), via www.kse.cw [accessed 26 March 2013].
[130] Also refer to Country decree of 3 August 2012, No.12/3836, Country Gazette 2012, No.45.
[131] Constitution, Article 51 and country ordinance Legal position of the Secretary General of Parliament (*Landsverordening Rechtspositie griffier Staten*), Official Curaçao Gazette 2010, No.87, Appendix n.
[132] Country ordinance Organisation and tasks of Parliament's Administration (*Landsverordening Organisatie en Taakstelling Griffie van de Staten*), Official Curaçao Gazette 2010, No.87, Appendix e, Article 2; Rules of Procedure, Articles 20 and 48.

government. It is also responsible for the drafting of Parliament's budget and annual accounts as well as for the day-to-day management of Parliament's finances.[133]

Parliament's personnel budget is fixed at a maximum of 40 people, but in case this maximum is reached, Parliament may hire a maximum of an additional two temporary staff members.[134] The secretary general of Parliament is one of the civil servants to be salaried according to the highest rank and salary scale, in line with the required educational level and expertise. He is also to receive a salary supplement to cover, inter alia, expenses of a representative nature.[135]

The Constitution also provides for salaries, pensions, and other financial provisions of members of Parliament, to be regulated by country ordinance adopted by a qualified majority.[136] However, as yet, no such ordinance has been enacted and previous ordinances regulating the financial provisions of members of Parliament were not incorporated in the legislative framework of the country of Curaçao.[137] Thus, at present, financial provisions available for members of Parliament are mostly unregulated.[138] The most recent attempt to increase pensions – or, more precisely, pensions of members of the then Island Council – also failed, because five days before 10 October 2010 the governor annulled the adopted Island ordinance as 'inconsistent with the general interest of the Kingdom'.[139]

More generally, Parliament's budget is determined as part of the regular Curaçao budgetary process. In practice, this implies Parliament has a large say in the size of its budget, both because Parliament has the constitutional right of budget and because Parliament is positioned as one of Curaçao's High Councils of State.[140] Each year, the president of Parliament is to hand in his/her budget proposal to the minister of finance. The minister may amend the proposal, but, according to the Rules of Procedure, he/she may only do so in consultation with Parliament itself.[141] As a more general, additional safeguard the government's accounting regulations require the explanatory memorandum to the draft budget to include both the budget proposals put forward by High Councils of State as well as the budget as approved by the Council of Ministers.[142]

[133] Country ordinance Organisation and tasks of Parliament's Administration, Article 6. Also refer to Country ordinance Legal position Secretary General of Parliament, the general part of the explanatory memorandum.
[134] Country ordinance Organisation and tasks of Parliament's Administration, Articles 3 and 4.
[135] Country ordinance Legal position Secretary General of Parliament, Articles 4 and 5, and the general part of the explanatory memorandum. Also refer to Country ordinance Legal and material rights and obligations of civil servants Parliament (*Landsverordening materieel ambtenarenrecht Staten*), Official Curaçao Gazette 2010, No.87, Appendix v, Article 6.
[136] Constitution, Article 52.
[137] Cf. Appendix A of the Country ordinance changing the General transitional regulation legislation and government country Curaçao (*Landsverordening tot wijziging van de Algemene overgangsregeling wetgeving en bestuur land Curaçao),* Official Curaçao Gazette 2010, No.102. Also refer to Country ordinance Government accounts 2010 (*Landsverordening Comptabiliteit 2010*), Official Curaçao Gazette 2010, No.87, Appendix b, Article 6.
[138] Also refer to 'Government working to correct legislation negative list' (*Regering werkt aan reparatie wetgeving negatieve lijst*), Amigoe, 10 September 2011.
[139] Decree of the Governor of the Netherlands Antilles of 5 October 2010 to annul the Island ordinance to change the pension regulation of members of the Island Council Curaçao (*Besluit van 5 oktober 2010 tot vernietiging van de Eilandsverordening tot wijziging van de pensioenregeling Eilandsraadsleden Curaçao (A.B. 1975, no.37), zoals vastgesteld in de vergadering van de eilandsraad van het eilandgebied Curaçao van 3 September 2010*), Country Gazette 2010, No.99.
[140] Country ordinance Government accounts 2010, Article 1i; Constitution, Article 85.
[141] Country ordinance Government accounts 2010, Articles 34 and 38 and the explanatory memorandum. Rules of Procedure, Article 21 and the explanatory memorandum. The Rules of Procedure require the draft budget to be handed over to the minister of General Affairs, cf. explanatory memorandum Article 21.
[142] Country ordinance Government accounts 2010, Article 38.

Resources (practice)

Score: 50

TO WHAT EXTENT DOES THE LEGISLATURE HAVE ADEQUATE RESOURCES TO CARRY OUT ITS DUTIES IN PRACTICE?

Parliament appears to receive adequate funds to carry out its duties, but there are some concerns about whether the administrative support necessary to enable members of Parliament to perform their duties is adequate. The administrative organisation of Parliament is an additional concern.

Parliament determines its own budget. Salaried personnel of Parliament's Administration increased from 40 in 2011 to 45 in 2013. There are no indications that the quantitative resources thus made available to Parliament are inadequate.[143] Those interviewed did, however, voice concerns about the administrative support available. According to one expert interviewed, the staff of Parliament's Administration are not sufficiently able to provide independent, solid legal advice. Another expert underscored the work pressure of personnel of the administration, pointing to the lack of expertise of members of Parliament. As a result, essential documents such as minutes and reports of parliamentary sessions are not published regularly nor on time.

An additional concern involves the financial provisions for members of Parliament, although it is understood that the lack of formal regulations has not been an obstacle to paying members of Parliament. Because those expenses are not accounted for separately in the Curaçao budget, their adequacy cannot be assessed. More generally, in 2011 the Court of Audit (*ARC – Algemene Rekenkamer Curaçao*) concluded that, at least up to April 2011, the setup of the administrative organisation of Parliament was 'absolutely insufficient' because of, among other things, a lack of clear internal procedures, appropriate authorisations and periodic accountability, and controls based on original source data.[144] According to the Court of Audit, the setup improved in April 2011, but whether or not the practice also improved is unknown. Also, according to one expert interviewed, the lack of on-going external oversight is a concern, and ex-post auditing of the Court of Audit is not enough to provide for effective control.

Independence (law)

Score: 75

TO WHAT EXTENT IS THE LEGISLATURE INDEPENDENT AND FREE FROM SUBORDINATION TO EXTERNAL ACTORS BY LAW?

Parliament is mostly independent and free from subordination by law, but government does have the constitutional power to call for new elections and dissolve Parliament.

The Constitution contains a number of provisions designed to safeguard the independence of Parliament. According to the Constitution, members of Parliament are to represent the Curaçao people and shall not be bound by a mandate or instructions when casting their votes (*stemmen*

[143] See Budget 2011 (*Landsverordening van de 28ste december 2010 tot vaststelling van de begroting van Curaçao voor het dienstjaar 2011),* Country Gazette 2010, No.6 and Budget 2013 (*Landsverordening van de 14e februari 2013 tot vaststelling van de begroting van Curaçao voor het dienstjaar 2013*), Country Gazette 2013, No.10, annex Statement of salaried personnel (*Staat van te bezoldigen personeel*).
[144] ARC, Report 068/11/CUR, 24 November 2011, regarding research into use of credit card by the secretary general of Parliament in the period January 2008 to 1 April 2011 (*Rapport inzake onderzoek Gebruik creditcard door griffier van de Staten in de periode januari 2008 tot 1 april 2011),* p.5.

zonder last). The explanatory memorandum adds that this implies 'it is not possible to give a constitutionally binding mandate to a member of Parliament'.[145] The Constitution also details which public positions are not to be held simultaneously with that of member of Parliament, such as governor, minister and civil servant, and allows for the possibility to specify other public positions by country ordinance.[146] Moreover, the Constitution also rules out membership of other High Councils of State and several positions within the judiciary.[147] The Constitution also rules out blood relations between members of Parliament,[148] but allows for other family ties. Spouses, however, cannot be members at the same time.[149]

Parliament also has the constitutional right of initiative and amendment, and may draft its own legislative proposals.[150] In addition, the Constitution also grants members of Parliament certain immunity from prosecution because they – and others participating – cannot face any charges for what they say in sessions of Parliament or its committees, nor for any documents they have presented in those sessions. It is not limited to immunity for statements regarding the subject discussed in Parliament and it extends to both criminal prosecutions, disciplinary actions as well as civil litigation. However, it does not cover meetings of parliamentary groups or non-official parliamentary commissions, nor identical statements made outside Parliament.[151] Also, law enforcement officers are not allowed to enter Parliament when in session without permission, except in those cases when someone is found in the act of committing an offence.[152] Impeding a member of Parliament's work is a highly punishable criminal offence.[153]

Moreover, Parliament is to elect its own president and deputy president, and, as of 2009, also decides for how long this appointment is to last. If a majority so desires, Parliament may dismiss the (deputy) president and elect another member of Parliament.[154] The president of Parliament controls the appointment to committees of Parliament in consultation with the different parliamentary groups.[155] With the change in constitutional relations, Parliament is now also able to appoint or contract its own staff[156] and gained additional powers to control its own budget as High Council of State, without having to resort to a mandate to do so by the minister of finance.[157] And although ministers do have a constitutional right of access to sessions of Parliament and take part in its deliberations,[158] Parliament controls its own agenda, and the president is to convoke Parliament if he or she deems necessary or if three members of Parliament put in a request.[159]

However, Parliament's independence is restricted by the fact that government has the constitutional authority to dissolve Parliament. Such a decision requires the government to call for new elections

[145] Constitution, Articles 39 and 56.3 and the explanatory memorandum. Also refer to Council of State, 'RvA no. RA/30-12-LV Initiative draft country ordinance to adapt the Electoral Code Curaçao' (*RvA no. RA/30-12-LV Initiatief-ontwerplandsverordening tot wijziging van het Kiesreglement Curacao (A.B. 2010, no. 87) (Zitting 2011-2012-019)*), (Curaçao, Council of State: 20 November 2012b).
[146] Constitution, Article 45. Also refer to Article 51 and Articles 30 and 38.
[147] Ibid., Article 45.
[148] Ibid., Article 46. The official term is 'consanquinity to the second degree'.
[149] Marriage between member of Parliament *after* their election is permitted.
[150] Ibid., Articles 77 and 78.
[151] Ibid., Article 61 and the explanatory memorandum on that Article. Also refer to see L.J.J. Rogier, Principles of Caribean Constitutional Law (*Beginselen van Caribisch Staatsrecht*). (Den Haag: Boom Juridische Uitgevers, 2012), p.135; HR 17 June 2011, LJN BQ2302.
[152] Code of Criminal Procedure (*Wetboek van Strafvordering*), Article 164.
[153] Penal Code (*Wetboek van Strafrecht*), Book 2, Title IV Articles 2:41 and 2:42. Also refer to Book 3, Title II, Article 3:15.
[154] Constitution, Article 50. Also: Rules of Procedure, Article 6 and the explanatory memorandum.
[155] Rules of Procedure, Article 50
[156] Constitution, Article 51 and Legal and material rights and obligations of civil servants Parliament, Article 7. Also refer to the Rules of Procedure, Article 17 and 18.
[157] Country ordinance Government accounts 2010, Article 1 and Articles 34, 38, 39 and 40. Also refer to the Rules of Procedure, Article 21. Cf. ARC, November 2011.
[158] Constitution, Article 58.
[159] Rules of Procedure, Articles 33 and 64.

as well, and for Parliament to reconvene in its new composition within three months.[160] The law does not detail under what circumstances Parliament may be dissolved, but in practice this is called for if a political dispute cannot be resolved within the Council of Ministers or if Parliament loses its confidence in the Executive and the political dispute is to be presented to the electorate.[161] To safeguard the 'continuity of Parliament', Parliament is to be dissolved on the day the new Parliament convenes.[162]

Moreover, individual members of Parliament cease to be so if they no longer fulfill the requirements for election, accept an incompatible function as referred to above, or in case of an irrevocable conviction in certain specific cases.[163] In the latter case, the Constitution explicitly requires that appeal against a declaration of nullity is possible.[164]

Independence (practice)

Score: 25

TO WHAT EXTENT IS THE LEGISLATURE FREE FROM SUBORDINATION TO EXTERNAL ACTORS IN PRACTICE?

Although Parliament or members of Parliament do act independently in certain circumstances, party discipline is considered to significantly limit Parliament's independence.

Parliament is widely considered to operate often as a 'rubber stamp', significantly reducing its ability to act independently from the Executive.[165] Thus, for example, Parliament only seldom adopts motions which go against executive policy, and most motions originating from the opposition only receive limited support.[166] Also, Parliament does sometimes submit proposals on its own initiative, but of the approximately 10 initiative legislative proposals drafted by members of Parliament, so far only two have been adopted by Parliament, and none have yet been enacted.[167] (Also refer to the section on Role.)

Many experts interviewed emphasised the significant role of political parties in this respect, and the importance of party discipline governing both acts of members of Parliament as well as those of the Executive. Because, whereas the independence of a member of Parliament and 'in fact also the people it represents'[168] is constitutionally embedded in the free mandate, in practice, the dominance

[160] Constitution, Article 53.
[161] Constitution, Article 29.
[162] Ibid., Article 53 and the explanatory memorandum on that Article.
[163] Constitution, Articles 43, 44, 45 and 46; Country ordinance Electoral Code Curaçao (*Landsverordening Kiesreglement Curaçao*), Official Curaçao Gazette 2010, No.87, Appendix d, Articles 123 and 125. Country ordinance Declaration of nullity membership Parliament (*Landsverordening Vervallenverklaring lidmaatschap Staten*), Official Curaçao Gazette 2010, No.87, Appendix m. Also refer to Council of State, 'RvA no. RA/30-12-LV Initiative draft country ordinance to adapt the Electoral Code Curaçao' (*RvA no RA/30-12-LV Initatief-ontwerplandsverordening tot wijziging van het Kiesreglement (A.B. 2010, No.87) (Zitting 2011-2012-19)*) (Curaçao: Council of State, 20 November 2012b), sub c.
[164] Constitution, Articles 43, 44, 45 and 46.
[165] See, for example, Emotional farewells for members of Parliament (*Emotionele taferelen bij afscheid Statenleden*), Amigoe, 26 March 2010 and 'Critical situation public finances' (*Situatie overheidsfinanciën kritiek*), 12 October 2012 via www.versgeperst.com [accessed 14 May 2013].
[166] There are exceptions, such as a motion of 15 March 2013 regarding a foundation for vocational education, 'Unanimous for improvement Feffik' (*Unaniem voor verbetering Feffik*), 16 March 2013, via www.kkcuracao.com [accessed 4 June 2013].
[167] Parliament's Administration informed Transparency International that two initiative proposals have been adopted and eight are 'pending'. No initiative proposal has yet been published in the Country Gazette.
[168] Council of State, 20 November 2012.

of political party discipline significantly affects the room for manoeuvre of individual members of Parliament. In fact, several members of Parliament drafted an initiative bill proposal to further formalise this. The draft proposed to adapt the Electoral Code to prevent individual members of Parliament from keeping their seat in case of a break with the political party on whose list of candidates they were elected, unless they themselves had received a sufficient number of votes (*zetelroof*).[169] The proposal was negatively advised upon by the Council of State (*Raad van Advies*), a High Council of State that advises both government and Parliament to ensure legislation satisfies the principles of a democratic rule of law.[170] The Council noted that a 'party political mandate' would require amendment of the Constitution. Thus far, Parliament has not proposed to do so.[171] However, several political parties have explicitly voiced their support for such a 'party political mandate', and implicitly or explicitly expect those elected via their list to give up their seat in Parliament in case of a break with the party.[172] (Also refer to Chapter VII.10 Political Parties.)

On the positive side, however, there are some instances in which Parliament does appear to take a more independent stance. This was, for example, the case when the coalition parties supporting the first Curaçao government voted on a motion to express their disapproval of the minister of finance's policy, when it became clear that government was likely to be instructed by the Kingdom Council of Ministers to adapt its budgetary policy.[173] Another example is when Parliament tried to summon directors of public companies to its sessions against the will of the Executive. (Also refer to the section on Role.) Individual members of Parliament, also, do in fact sometimes breach party discipline. As already mentioned above, in November 2012, a newly chosen member of Parliament left his parliamentary group to join sides with those parties who ended up forming a coalition government. Earlier, at the end of July 2012 and some two weeks after the instruction of the Kingdom Council of Ministers to the government of Curaçao,[174] two members of Parliament of the then ruling parties left their respective parliamentary groups and joined the opposition. The coalition lost its majority in Parliament, and at the beginning of August, the cabinet handed in its resignation. Government also issued a decree to dissolve Parliament and called for new elections.[175]

What followed was, among other things, described as a 'stalemate between the Executive and Parliament',[176] 'a political impasse',[177] and 'a parliamentary dictatorship'.[178] Depending on one's point of view, it illustrated Parliament's own dysfunctioning or its strength. Parliament did not convene in plenary sessions for weeks, as the then president, a member of one of the coalition parties, annulled a scheduled parliamentary session, and suspended the next one before members of Parliament could deliberate on the situation and formally vote on a motion of no confidence.[179] Where the president pointed to the risk of a 'government vacuum' (*bestuursvacuum*),[180] the outgoing

[169] Initiative draft country ordinance to amend the Electoral Code Curaçao.
[170] Constitution, Article 64 and the explanatory memorandum. Also refer to country ordinance Council of State (*Landsverordening Raad van Advies*), Official Curaçao Gazette, 2010, No.87, Appendix q, Article 20.
[171] Council of State, 20 November 2012.
[172] See for example MAN Rules of Procedure, Article 6; PAIS Rules of Procedure, Article 5.3.5. Also, for example, 'I do not see any reason to put myself up for election' (*Ik zie geen reden om mij verkiesbaar te stellen*), 17 January 2013, via www. versgeperst.com [accessed 22 May 2013].
[173] Note, that, however, a more strongly-worded oppositional motion to vote a lack of confidence in the minister was not sufficiently supported.
[174] On this, see Chapter VII.8 Supreme Audit and Supervisory Institutions (Public Sector).
[175] Country decree of 3 August 2012, Curaçao Gazette 2012, No.3836.
[176] Press notice of the Governor of Curaçao, as reported in 'Governor asks for advice on request Parliament' (*Gouverneur vraagt advies inzake verzoek Staten*), 30 August 2012, via www.versgeperst.com [accessed 5 April 2013].
[177] 'Press notice Cabinet of the Governor of Curaçao. Conclusion advice mr C.M. Grüning and mr R.P. Koeijers' (*Persbericht Kabinet van de Gouveneur van Curaçao. Conclusie advies mr C.M. Grüning en mr R.P. Koeijers*), 11 September 2012.
[178] 'Asjes suspends all Parliamentary sessions' (*Asjes schort alle parlementaire vergaderingen op*), 24 August 2012, via www.versgeperst.com [accessed 5 April 2013].
[179] 'Members of Parliament powerless' (*Statenleden staan machteloos*), 25 August 2012, via knipselkrantcuracao.wordpress.com [accessed10 April 2013].
[180] 'Contributed: point of view Ivar Asjes request interim cabinet' (*Ingezonden: standpunt Ivar Asjes verzoek interim cabinet*), 4 September 2012, via www.versgeperst.com [accessed 5 April 2013].

prime minister argued that, 'because of the outgoing status of the cabinet', 'no importance can be attached to the lack of confidence of a majority', and underscored the fact that there was no 'cabinet crisis'.[181] Nevertheless, almost two months after the outgoing cabinet handed in its resignation, and some three weeks after the parliamentary majority had formally expressed its vote of no confidence, the five political groups who represented a majority of 12 seats agreed on an interim cabinet. On that same day, the outgoing cabinet was dismissed and the new interim cabinet installed.[182]

Governance

Transparency (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC CAN OBTAIN RELEVANT AND TIMELY INFORMATION ON THE ACTIVITIES AND DECISION-MAKING PROCESSES OF THE LEGISLATURE?

There are several provisions to ensure transparency of Parliament's activities and decisions, such as the requirement to announce and report on public sessions in a timely manner. However, the possibility to convene behind closed doors is not clearly restricted, and Parliament may prohibit individuals from entering its building. Also, there are almost no formal provisions to provide for publication of parliamentary documents.

The Constitution states that Parliament's plenary sessions and, since 1994, sessions of the Central Committee are open to the public.[183] However, Parliament may vote – by qualified majority – to hold a closed session. The Central Committee may do so as well and only requires a regular majority to do so. There are no restrictions on the type of decisions allowed in closed plenary sessions.[184] Moreover, although public sessions are indeed public, the new Rules of Procedure now include the possibility for the president to deny access to one or more people to Parliament's building if a majority of Parliament so requests, stating serious reasons. If necessary, the president may deny access using the police force (*sterke arm*).[185]

Sessions open to the public are also allowed to be broadcast by both radio and television, and freely accessible to journalists.[186] The agendas of these public sessions are to be made public at least four days prior to the session, except in urgent matters.[187] Minutes and verbatim records are

[181] Letter from prime minister Government of Curaçao, Gerrit F. Schotte, to the governor of Curaçao, Mr. F. Goedgedrag, Intention to form an interim cabinet (*Voornemen tot vorming interim cabinet*), 25 September 2012.
[182] 'Press notice Cabinet of the Governor of Curaçao. Final report formateur' (*Persbericht Kabinet van de Gouverneur van Curaçao. Eindverslag formateur*), 29 September 2012.

[183] Constitution, Article 55. Also Rules of Procedure, Article 34.
[184] Ibid. Compare with Islands regulation Netherlands Antilles (*Eilandenregeling Nederlandse Antillen*), Article 36.1 and Rules of Procedure Parliament of the Netherlands Antilles1994 (*Beschikking van 20 maart 1987 van de Staten van de Nederlandse Antillen houdende vaststelling van een nieuw Reglement van Orde van de Staten van de Nederlandse Antillen, Publicatieblad Nederlandse Antillen 1987, No.61, zoals laatstelijk gewijzigd op 11 oktober 1994*), Country Gazette 1994, No.123, Article 17.
[185] Rules of Procedure, Article 78. The explanatory memorandum refers to a case in 2008, when a Dutch member of Parliament was denied access to the Parliament of the Netherlands Antilles.
[186] See also Rules of Procedure, explanatory memorandum to Article 34.
[187] Ibid., Article 64.

mandatory.[188] The minutes of public sessions are to include, among other things, an overview of the incoming documents, an account of what has been said, voting records and a description of all announcements, notifications and proposals, as well as all decisions of the president of Parliament.[189] Barring voting on nominations, commendations or appointments of persons – which are required to be in writing – if one member of Parliament requests such, votes may be taken by a roll call, requiring members of Parliament to cast their votes verbally.[190]

Parliament's Administration is responsible for the provision of information over Parliament's decisions, reports and other activities carried out or intended.[191] However, there are hardly any explicit provisions which require Parliament to make documents public.[192] For example, although agendas are required to be made public, there is no explicit provision to make parliamentary minutes or verbatim records available to the general public. Similarly, whereas parliamentary committees are to report to the Central Committee, which is to report to Parliament, there are no provisions which require Parliament to make these documents public.[193] Also, with the exception of some provisions related to initiative draft ordinances,[194] there are no legal requirements for Parliament to make draft bills or adopted legislative documents public. And, more generally, there are no provisions to make public all (non-confidential) documents exchanged between government and Parliament. There are no requirements to make any documents available on Parliament's website.

Parliament's own Rules of Procedure, however, are required to be made public,[195] and there are some provisions related to parliamentary inquiries to increase transparency.[196]

Transparency (practice)

Score: 50

TO WHAT EXTENT CAN THE PUBLIC OBTAIN RELEVANT AND TIMELY INFORMATION ON THE ACTIVITIES AND DECISION-MAKING PROCESSES OF THE LEGISLATURE IN PRACTICE?

People have access to public parliamentary meetings and are also able to follow those meetings via internet or radio broadcasts. Convocations of public parliamentary meetings are generally published in time. Most documents related to Parliament's activities and decision-making processes are, however, more difficult to obtain, although recently internet access to several types of documents improved considerably.

[188] Ibid., Articles 68 and 106; Country ordinance Organisation and tasks of Parliament's Administration, Article 6 and the explanatory memorandum to the Country ordinance Legal position Secretary General of Parliament, general part.
[189] Rules of Procedure, Articles 68 and 69.
[190] Ibid., Articles 84 and 97. Also: Oberon Nauta, Good Governance in 'The West'. Institutional and Social Constraints of Good Governance in the Caribbean Parts of the Dutch Kingdom (*Goed bestuur in de West, Institutionele en maatschappelijke beperkingen voor goed bestuur in de Caribische rijksdelen*) (Oisterwijk: Uitgeverij BOXPress 2011, 2011), p.44.
[191] Country ordinance Organisation and tasks of Parliament's Administration, Article 6.
[192] Constitution, Article 62.
[193] Rules of Procedure, Articles 31, 38 to 43, and Article 54.
[194] See Country ordinance Council of State, which does require Parliament to publish the Council's advice on an initiative draftordinance and its reaction on the advice and refers to Articles 9 and 11 of the Country ordinance on public access to government information (*Landsverordening Openbaarheid van bestuur*), Official Curaçao Gazette 2010, No.87, Appendix t.
[195] Constitution, Article 62.
[196] Rules of Procedure, Article 114. Also refer to Inquiry regulation (*Enquêteregeling)*, Official Curaçao Gazette 2010, No.87, Appendix o.

In practice, all parliamentary plenary sessions and those of the Central Committee are open to the public. Public access to parliamentary sessions is also provided for through both radio and internet, although the frequent change of hands of broadcasting rights for radio reduce transparency in practice. The internet TV-channel,[197] however, can easily be found via a link on Parliament's website, and provides access to some videos recorded earlier. It does not, however, provide a search engine, and access to videos made before the launch of the site is not provided for.

Also, the convocations of the public plenary sessions and the public sessions of the Central Committee are made available on the internet, albeit in a somewhat fragmented way, and only from June 2012 onwards.[198] As far as could be assessed, they are now usually published well in advance. Also, Parliament is thought to be fairly effective in informing the public about its work, in the sense that, as one respondent indicated, individual members of Parliament often have good access ('*een direct lijntje*') to the media.

However, Parliament as an institution is not considered to provide information about its work in as an effective and timely manner. Those who know what they are looking for and know whom to ask for it, are likely to receive the information requested eventually, but Parliament – at least up to recently – does not proactively publish a register of all its documents received and produced, its activities and its decisions. Moreover, minutes of the sessions, including voting records, may be difficult to obtain at all.[199] Also, although Parliament's website does contain general information on, for example, Parliament's duties and powers, committees, and its own rules of procedure, the information provided is somewhat limited (but see below). Moreover, although Parliament's website does offer a language choice in Papiamentu, Spanish and English, legislation on the website is only made available in Dutch, whereas several other documents are only made available in Papiamentu.

On the positive side and importantly, more recently, since March 2013, Parliament is significantly expanding the content of its website. The website now also contains links to official documents published in the Country Gazette and the Official Curaçao Gazette, including those relevant to the constitutional changes in October 2010. It also contains lists of incoming documents, some committee reports, motions, draft legislation and some letters received and sent, although it could not be determined whether or not the information provided is complete. Minutes of meetings, however, are not yet published on the website, and the website does not provide much information about Parliament's activities and decision-making processes before March 2013.

Accountability (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE LEGISLATURE HAS TO REPORT ON AND BE ANSWERABLE FOR ITS ACTIONS?

There are a number of checks and balances in place, which include a (limited) constitutional review and Kingdom regulations to ensure compatibility with higher-order law. However, barring elections, there are no provisions which require Parliament to consult with or report to the public. Individual members of Parliament enjoy limited immunity from prosecution, and may be disciplined.

Legislation may not be in conflict with the Charter for the Kingdom, international regulations, Kingdom Acts and orders in council for the Kingdom, or with interests of which promotion or

[197] www.parlamentodikorsou.tv.
[198] The internet TV-channel provides convocations from June 2012 onwards; since March 2013, convocations are to be found on Parliament's own website, www.parlamento.cw/documents.
[199] Also refer to L.J.J. Rogier, Principles of Caribean Constitutional Law (*Beginselen van Caribisch Staatsrecht*) (Den Haag: Boom Juridische Uitgevers, 2012), p.133.

protection is a Kingdom affair.[200] To safeguard this, the governor, in capacity as Kingdom organ, is to scrutinise legislation approved by Parliament for compliance with higher-order law. With the change in constitutional relations, the governor himself can no longer act on his findings in ways similar to when he was representative of the head of the government of the Netherlands Antilles, but may find reasons to bring matters to the attention of the Kingdom government.[201] If the problem cannot be redressed within the country, as an *ultimum remedium*, the Kingdom government may act and, for example, suspend or annul the legislation concerned.[202] (Also refer to Chapter VII.2 Executive.)

In addition, any country ordinance to change some specified provisions in the Curaçao Constitution, such as those relating to the fundamental rights and freedoms, the authorities of the governor, Parliament and the administration of justice, cannot enter into effect until the government of the Kingdom has signified its agreement.[203] Moreover, at the country level, there is some possibility for constitutional review, as the court now has the authority to review the compatibility of country ordinances with the Constitution for fundamental human rights and freedoms.[204] Nevertheless, according to one legal expert, and also voiced by others,[205] this is 'a step forward, but the step, although on paper perhaps impressive, is in practice of little importance'.[206] In the majority of cases, Parliament is still able to take the law into its own hands and decide – by regular majority – whether or not a draft ordinance violates the Constitution.[207]

There are also several provisions to ensure accountability *before* Parliament approves legislation. Thus, as mentioned, Parliament is required to submit draft initiative legislation to the Council of State. Advices of the Council are not binding but do serve to hold the legislature accountable because they are – in principle – to be made public, and to be accompanied by a written reaction of Parliament.[208] The Constitution also provides for the possibility to consult the public on draft country ordinances or a subject of 'fundamental concern to society' by means of a consultative referendum, although not a binding one.[209] In addition, to provide Parliament with the necessary information, the Central Committee is authorised to, among other things, hold hearings, consult external experts and organise working visits. Similar provisions exist for other parliamentary committees.[210]

However, none of the provisions *require* Parliament to consult the public, except for, one might say, the requirement to elect the members of Parliament after or within four years.[211] At the moment, there is no such thing as a citizen's initiative, allowing citizens – under conditions – to put a subject

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[200] Kingdom Act of 7 June 2010, regarding Regulations for the Governor of Curaçao (*Rijkswet houdende Reglement voor de Gouverneur van Curaçao*), Bulletin of Acts and Decrees 2010, No.341, Article 21.
[201] Ibid., Article 20.
[202] Charter for the Kingdom of the Netherlands (*Statuut voor het Koninkrijk der Nederlanden*), 2010, Bulletin of Acts and Decrees 2010, No.775, Articles 43 and 50. For a description of the process envisioned with safeguarding the interests mentioned, see The Kingdom's role of safeguarding. The safeguarding of rights and freedoms, legal certainty and good governance in the Kingdom of the Netherlands (*Waarborgfunctie Koninkrijk. Het waarborgen van rechten en vrijheden, rechtszekerheid en deugdelijk bestuur in het Koninkrijk der Nederlanden)*, 15 July 2011, via www.rijksoverheid.nl [accessed 9 April 2013].
[203] Charter for the Kingdom, Articles 42, 43 and 44.
[204] Constitution, Article 101.
[205] See, for example, Pueblo Soberano, Draft Constitution Curaçao (*Concept Staatsregeling Curacao*), Article 77; PAR, Crisis document. *Ban pa Korsou awor*!, p.26 and PAIS, Constitutional court needed quickly to prevent dictatorship (*Constitutionele Kamer moet snel komen om dictatuur te voorkomen*), 27 August 2012.
[206] J.Th. Wit, *De democratische rechtsstaat Curaçao: kan het beter?* Speech of 4 July 2011, Curaçao, p.8. Also Investiture speech of Karel Frielink, president of the Bar Curaçao of 21 September 2012 (*Rede mr Karel Frielink Deken van de Orde van Advocaten Curaçao gehouden op vrijdag 21 september 2012 ter gelegenheid van de installatie van een drietal rechters bij het Gemeenschappelijk Hof van Justitie van Aruba, Curaçao, Sint Maarten en van Bonaire, St. Eustatius en Saba*).
[207] Wit 2011.
[208] Country ordinance Council of State, Article 28.
[209] Constitution, Article 60.
[210] Rules of Procedure, Article 32. Cf. Article 52.
[211] Constitution, Articles 41, 42 and 43. Cf. also Article 53.

on the agenda of Parliament. And although the Constitution does contain the fundamental right of petition, there are no additional provisions regulating the submission and processing of such petitions.[212] Moreover, there are no provisions requiring members of Parliament to proactively report to voters about their own and Parliament's activities.

As noted in the above, members of Parliament only enjoy a limited degree of immunity from prosecution under the Constitution, to protect their freedom of speech within chambers of Parliament. There are no other exemptions from ordinary investigations and charges, either on criminal or civil matters. Thus, for example, members of Parliament can be arrested and prosecuted for abusing their powers while in office, and there are no special permissions required in order to prosecute or keep in custody a member of Parliament.[213] If a member of Parliament is irrevocably convicted of certain specified malfeasances or a prison sentence of at least a year, he or she can no longer be a member of Parliament.[214] Also, Parliament's Rules of Procedure include some disciplinary actions against members of Parliament who, for example, stray off topic, use offensive language, breach confidentiality or instigate the commissioning of unlawful acts. This may include, ultimately, removal from the building, if necessary using the police force.[215]

Accountability (practice)

Score: 50

TO WHAT EXTENT DO THE LEGISLATURE AND ITS MEMBERS REPORT ON AND ANSWER FOR THEIR ACTIONS IN PRACTICE?

In practice, Parliament and its members hardly ever report on or answer for their actions. Also, since the change in constitutional relations, those in place to hold the legislature accountable seldom do so.

So far, the higher-order provisions mentioned above, have not been used often to hold the legislature accountable. Whereas the governor as representative of the head of the government of the Netherlands Antilles could and did annul legislation[216] of the island territory, this assessment returned only one example of an ordinance approved by the (then) Curaçao Island Council that was subsequently annulled by the governor *in his capacity as Kingdom organ*. When, a little more than a month before the birth of the new country, the members of the Island Council all but one voted in favour of a new pension provision, the governor – of the Netherlands Antilles – used his powers as Kingdom organ to annul the ordinance 'because of [in the 'special circumstances'] inconsistency with the general interest of the Kingdom'.[217] The Kingdom Council of Ministers itself has never used its powers to suspend or annul legislation.[218] Also, as far as is known, there have not been parties seeking constitutional review of compatibility of country ordinances with the fundamental human rights and freedoms guaranteed in the Constitution.

[212] Constitution, Article 104; Rogier 2012:138.
[213] Penal Code, Book 2, Title XXVIII and Book 3, Title VIII.
[214] Constitution, Article 45 and the explanatory memorandum on that article; Country ordinance Declaration of nullity membership Parliament, Article 1. Also refer to Penal Code, Book 1, Title II, Articles 1:64 and 1:65.
[215] Rules of Procedure, Articles 77 and 78. The Rules detail that a member of Parliament may be excluded from one or more parliamentary sessions, but only in as far as those start on the day on which they were removed.
[216] The governor did not only annul legislation, but also decisions of the government. Government is assessed in Chapter VII.2 Executive.
[217] Decree of the governor of the Netherlands Antilles of 5 October 2010 to annul the Island ordinance to change the pension regulation of members of the Island Council Curacao. The governor refers to Article 43.2 of the Charter of the Kingdom and Article 100 juncto 98.1 of the Islands regulation Netherlands Antilles (ERNA).
[218] See also 'Intervention won't happen' (*Ingrijpen gebeurt nooit*), 5 June 2013, Antilliaans Dagblad.

Consultative referenda are not used often, but have been held three times to consult the people of Curaçao on choices in constitutional relations, lastly in 2009.[219] Other than that, however, according to the experts interviewed, members of Parliament are not actively engaging in public consultation on relevant issues.[220] Parliament and members of Parliament are also not considered to actively support public oversight, and do not, for example, regularly publish reports about its or their activities. However, the recently improved website, although its content still needs to be expanded, does now allow the public to better hold Parliament accountable. (Also refer to the section on Transparency.)

In recent years, members of Parliament have not been prosecuted for abusing their powers or for other criminal offences while in office. As for parliamentary immunity, experts interviewed showed some concern that the (limited) immunity granted is too often used to avoid members of Parliament being held accountable. For some members of Parliament, a legal expert noted, '[t]he parliamentary immunity enjoyed by members of Parliament appears to be an excuse to say whatever they like in Parliament'.[221] As noted, Parliament itself included disciplinary actions in its Rules of Procedure. In practice, the former president of Parliament and his substitute have used or have threatened to use these powers several times, but whether or not this was done to hold individual members of Parliament accountable, was subject to debate. The former president himself described the use of his powers as legitimate use of an 'escalation model'; a member of Parliament thus removed described it as 'dictatorial'.[222]

Integrity Mechanisms (law)

Score: 50

TO WHAT EXTENT ARE THERE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF MEMBERS OF THE LEGISLATURE?

There are some provisions to ensure the integrity of members of Parliament, such as the constitutional safeguards to prevent conflicting positions within the public service and some penal provisions to criminalise bribery. However, important provisions such as those related to gifts, assets, additional functions and lobbying contacts are not or are no longer in place.

Before accepting office, members of Parliament are constitutionally required to swear an oath or solemnly affirm in the presence of the governor that they have not given or promised anything related to their election and will not do so, and will not be bought ('oath of purity' – *zuiveringseed*). The oath also includes the positive obligation to abide by the Constitution and to promote the welfare of Curaçao to the best of one's ability ('oath of office' – *ambtseed*).[223] This is also reflected in the Constitutional requirement of Parliament to represent 'the entire people of Curaçao'.[224]

[219] Referenda were held in 1993, 2005 and 2009.
[220] See, for example, Askhon Dushi Kòrsou, 17 January 2012, Letter to the president of the Parliament of Curaçao, and 'Parliament stages show' (*Parlement voert een show op*), 8 March 2012, via www.versgeperst.com [accessed 15 April 2013].
[221] Speech by Karel Frielink LL.M. president of the Curaçao Bar Association on the occasion of the installation of four judges at the Joint Court of Justice of Aruba, Curaçao, St Maarten, and of Bonaire, St Eustatius, and Saba on Friday 23 September 2011.
[222] See 'Asjes has Godett removed' (*Asjes laat Godett verwijderen*), 5 November 2010 via www.rnw.nl [accessed 15 April 2013].
[223] Charter of the Kingdom, Article 47 and Constitution, Article 49. The oath is similar to that of, for example, ministers, but differed somewhat from the oath of, for example, the Ombudsman. Compare Constitution Article 36 and Country ordinance Ombudsman Article 8.
[224] Constitution, Article 39.

Also, as mentioned in the above, the Constitution contains several provisions related to incompatibilities, such as the concurrent holding of any other position in the state service. Before accepting office, prospective members of Parliament are required to hand in their credentials, including a list of all public positions they occupy as well as other positions serving the country; candidates holding conflicting positions cannot be members of Parliament.[225] Moreover, prospective members of Parliament are not eligible for membership when they have been irrevocably convicted of criminal acts and are also deprived of their right to vote.[226] Parliament's own rules of procedure, in addition, contain a ban on the disclosure of confidential information and of the content of closed sessions, except for what is recorded in committee reports on those sessions.[227]

However, there are no specific provisions regulating non-public and commercial activities of members of Parliament, assets and interests declarations, nor on the acceptance of gifts and hospitality. Thus, for example, where the former regulations relevant to members of Curaçao's Island Council did include provisions to prevent members from taking on commercial work commissioned by or for the Council or to vote on issues, including appointments, which concern their families or which concern them personally, these provisions were not included in the Curaçao Constitution.[228] As far as could be established, they are also not included in other legislation. Members of Parliament are also not required to maintain and publicise a register with additional functions and additional sources of income. And although political candidates *prior* to the election are now required to maintain a register of certain gifts, no comparable legislation exists for members of Parliament to maintain a register of financial gifts and gifts in kind. (Also refer to Chapters VII.6 Electoral Management Body and Chapter VII.10 Political Parties.) Members of Parliament are also not required to record or disclose contacts with lobbyists. Members of Parliament, are, however, required to receive permission for official missions from the Central Committee, or, in urgent matters, a majority of parliamentary groups consulted by the president. No public register of official missions is required.[229]

More generally, although there is a code of conduct for civil servants attached to Parliament's Administration, members of Parliament do not have their own code of conduct.[230]

Members of Parliament can be convicted for abuses of office, and, for example, be sentenced to a maximum prison sentence of six to eight years or get a fine if they commit bribery, either accepting or soliciting a gift or promise or service.[231] In addition, they are required to report abuses of office and other related crimes of which they have become aware while carrying out their official duties, with a few exceptions such as those related to the risk of incriminating themselves.[232] As mentioned above, in specified circumstances those irrevocably convicted of certain crimes cease to be members of Parliament. The current legislative framework, however, does not provide for suspension of membership if, for example, someone is temporarily held in custody or convicted but with the possibility of appeal.

[225] Ibid., Article 47; Electoral Code, Section VIII; Rules of Procedure, Article 4.
[226] Constitution, Article 43.
[227] Rules of Procedure, Article 59.
[228] Islands regulation Netherlands Antilles, Articles 13 and 38. Compare Constitution of Sint Maarten, Article 53.
[229] Rules of Procedure, Article 32 and the explanatory memorandum to this Article.
[230] Cf. Country ordinance Legal and material rights and obligations of civil servants Parliament.
[231] Penal Code, Book 2, Title XXVIII, for example Article 2:350 and 2:351. Also refer to Book 3, Title VII.
[232] Code of Criminal Procedure, Article 200.

Integrity mechanisms (practice)

Score: 25

TO WHAT EXTENT IS THE INTEGRITY OF LEGISLATORS ENSURED IN PRACTICE?

Because of a lack of sufficient integrity rules and the lack of transparency in practice, it cannot be established whether the integrity of members of Parliament is ensured in practice.

Given that there is no legal requirement to do so, Parliament does not maintain registers of gifts and hospitality disclosures nor registers of assets and interests declarations. There is also no public register of additional functions and additional sources of income of members of Parliament, and the information related to public positions annexed to the credentials is not required to be made public.[233] Official missions are mostly approved by the Central Committee as required, but, according to one expert interviewed, this is not always the case, and depends on the individual president who is to sign off for approval. There is no public record of official missions.

There have been some instances to suggest other interests than the public interest are at stake. Thus, for example, as mentioned above, the governor of the Netherlands Antilles considered the decision-making processes of the Island Council, when all but one of its members approved their own pension regulation, to be in conflict with the principle of good governance. That would have required the members of the Council to tread with extra caution to avoid any perception that their personal interests would influence their decisions, whereas in practice the governor noted the decision was 'prepared without care' and with an 'exceptional hastiness'.[234]

Also, as one expert interviewed pointed out, the pressure on individual members of Parliament can be great. As mentioned, there is no record of individual members of Parliament prosecuted or convicted for abuses of office in recent years. However, in 2012 several members of Parliament made accusations of attempted bribes in different media. These members of Parliament were all reportedly approached to withdraw their support for the then ruling government or, in one case, the coalition in the making.[235] As far as could be established, in none of those instances did members of Parliament actually officially report the attempt, but in at least one case the Public Prosecutor's Office investigated further on its own initiative.

[233] Cf. Rules of Procedure, Article 4.
[234] Decree of the Governor of the Netherlands Antilles of 5 October 2010 to annul the Island ordinance to change the pension regulation of members of the Island Council Curaçao.
[235] See, for example, 'Investigation into bribery members of Parliament' (*Onderzoek naar omkoping Statenleden*), 31 July 2012, via www.kkcuracao.com [accessed 10 April 2013]; 'Cordoba (PS) was offered two million' (*Cordoba (PS) is 2 miljoen aangeboden*), Antilliaans Dagblad, 28 November 2012.

Role

Executive oversight

Score: 25

TO WHAT EXTENT DOES THE LEGISLATURE PROVIDE EFFECTIVE OVERSIGHT OF THE EXECUTIVE?

Parliament has numerous and sufficient powers to effectively oversee the Executive, but its performance in practice is considered to be weak. Positive exceptions notwithstanding, Parliament does not hold the Executive sufficiently accountable and does not effectively use the information and advice provided to support its executive oversight.

Under the Constitution, ministers are accountable to Parliament.[236] Parliament does not have the power to scrutinise appointments to executive posts, but, as mentioned, if a minister no longer has the confidence of Parliament, he or she is to step down.

To carry out its executive oversight, Parliament has important powers. Parliament has the constitutional right to be provided with written or oral information by the Executive, within a reasonable time period, as long as providing this information is not inconsistent with the interest of the country or the Kingdom (*vragenrecht*).[237] Parliament also has the right to summon one or more members of the Executive to Parliament to its plenary or committee sessions for further discussion, and a minister thus summoned should also appear (*recht van interpellatie*).[238] To summon third parties and extend its scope beyond the Executive, including public companies and public foundations, Parliament may use its constitutional right of inquiry, including additional powers, such as the possibility to administer an oath to those questioned (*recht van enquête)*.[239] Parliament also has the right of budget (*budgetrecht*), and government is only authorised to spend if Parliament has approved its budget.[240] Parliament may also amend the budget proposed, as well as any other draft ordinances (*recht van amendement*).[241]

To allow Parliament to scrutinise the Executive through all the stages of its work, annually, the governor, on behalf of the government, is to inform Parliament of the government's proposed policy, and government is to hand in a balanced budget.[242] In the course of the year and after the year's closing, government is also required to account for the revenues and expenditures of the country, and to provide Parliament with an annual account, examined by the Court of Audit and including a report accounting the extent to which the policy proposals formulated have been realised.[243] Similar duties for the Executive to report back to Parliament are included elsewhere. For example, the minister of general affairs is to annually report on the application of the country ordinance on public

[236] Constitution, Article 28 and the explanatory memorandum.
[237] Ibid., Article 57 and the explanatory memorandum to that article. Also refer to Rules of Procedure, Articles 32, 52 and 96.
[238] Constitution, Article 58 and the explanatory memorandum to that article. Also refer to Rules of Procedure, Articles 32, 52 and 95.
[239] Constitution, Article 59 and Country ordinance Inquiry regulation. Also refer to Rules of Procedure, Chapter X. Also refer to Council of State, 20 November 2012a.
[240] Constitution, Article 85.
[241] Ibid., Article 78.
[242] Ibid., Articles 54 and 85.
[243] Ibid., Article 85. Country ordinance Government accounts 2010, Articles 33, 50 and 51. Also refer to Article 42 and the Kingdom Act Financial Supervision Curaçao and Sint Maarten, Article 18.

access to government information. The recent ordinance on health care cost insurance requires government to do so within three years.[244]

Also, to support Parliament in its Executive oversight, High Councils of State such as the Court of Audit and the Ombudsman are required to report to Parliament, and Parliament may request them to provide further information to, or in, Parliament. Parliament may also request the Court of Audit to investigate. Parliament appoints the Ombudsman, and plays a role in the appointment process of the members of the Court of Audit. Similarly, the Kingdom Acts on the Law Enforcement Council and the Board of Financial Supervision contain provisions to provide Parliament with reports and advice. (For more information, see Chapters VII.5 Law Enforcement Agencies, VII.7 Ombudsman and VII.8 Supreme Audit and Supervisory Institutions (Public Sector)) Moreover, Parliament can always use its right of initiative and its right of amendment to legally require the Executive to provide specific information.[245]

Overall, then, the powers granted to Parliament are considered to be many. However, there are doubts regarding the ability of Parliament to effectively apply its broad powers in the area of executive oversight in practice, and to monitor its progress in the execution of legislation adopted and policy plans formulated. Those interviewed in the course of the assessment labelled Parliament's performance in practice as 'weak' and 'too dependent on the Executive'. Parliament is said to be 'not functioning well' and too often acting as 'a rubber stamp', also in relation to the budget process. This lack of independence combined with the above-noted weak accountability mechanisms renders Parliament's oversight of the Executive vulnerable.

Although ministers are sometimes summoned to Parliament to provide information, one expert interviewed doubted whether Parliament in practice make sufficient use of its rights to hold the Executive accountable when the quality of the information provided is insufficient. Also, agenda items put up for discussion by the opposition are reported to not always receive the same attention and same prompt processing as items listed by members supporting the coalition.

In addition, effective oversight in practice is hampered in those instances where public companies, public foundations and other public entities are concerned. This was illustrated on more than one occasion when board members, in line with the view of the Executive which strongly felt public companies were not to talk to Parliament on their own, did not show when Parliament required them to attend a meeting.[246] Also, although Parliament does regularly vote or suggest the setting up of a commission of inquiry, such as on the functioning of the Security Service Curaçao or the judicial chain, so far no such commission has actually been installed in Curaçao in practice since October 2010. In the history of the Netherlands Antilles, the instrument was also not often used.[247]

Moreover, supportive information of advisory or supervisory bodies is not used, or not used in a timely manner. For example, reports of the Court of Audit do not generate much interest in Parliament, although the Court of Audit does detect a turn for the better. Parliament has not yet, however, called a minister to account following a report of the Court of Audit.[248] Annual reports and individual reports and decisions of the Ombudsman are also not discussed in parliamentary sessions. (Also refer to Chapter VII.7 Ombudsman and Chapter VII.8 Supreme Audit and Supervisory Institutions (Public Sector)).

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[244] Country ordinance on public access to government information, Article 15. Country ordinance Health care insurance (*Landsverordening Basisverzekering ziektekosten*), Country Gazette 2013, No.3, Article 10.7.

[245] Cf. Constitution, Articles 77 and 78.

[246] See, for example, 'Director Curoil not in Parliament' (*Directeur Curoil niet naar Staten*), 9 June 2012, via knipselkrantcuracao.wordpress.com; 'Supervisory board Aqualectra not in Parliament' (*RvC Aqualectra niet in de Staten*), 27 September 2011, via www.versgeperst.com [accessed 22 May 2013].

[247] Country ordinance Inquiry regulation, general part of the explanatory memorandum.

[248] Cft, Report of findings. PEFA-assessment financial management Curaçao (*Rapport van bevindingen. PEFA inventarisatie financieel beheer*) (Curaçao, Cft: February 2013), punt 28c.

Parliament's track record of scrutinising the budget is also considered negatively. For one, this is because amendments to earlier approved budgets were only approved many months after the legislative term required, if at all.[249] According to the Court of Audit, Parliament is not actively involved in the quality of the budget, and it is questionable if Parliament itself is convinced of the importance of its own research and supervision.[250] At times, Parliament was also side-tracked as government found creative ways to finance projects without including Parliament in its regular budgetary process. Thus, for example, in trying to finance its education plan, the first Curaçao government, without prior approval of Parliament, decided to allocate part of the reserves of one of the public companies to finance education.[251] (Also refer to Chapter VII.8 Supreme Audit and Supervisory Institutions (Public Sector)).

More generally, Parliament does not pay a significant amount of attention to the Executive's implementation of and compliance with legislation. The Executive is not often held accountable for not complying with requirements to regularly inform Parliament on the execution of laws, or for not adequately implementing legislative provisions. As a result, as is illustrated in several chapters in this assessment, many provisions look good on paper but are not adequately implemented or complied with in practice. On the positive side, there are exceptions to this rule. For example, Parliament is now more focused on the monitoring of public contracting. After discussing a report of the administration's internal auditor on public contracting, Parliament voted in favour of a motion to request the Executive to create a public register as required by law. The motion also requests to further investigate whenever there is an indication that people have acted against the law.[252]

Legal reforms

Score: 50

TO WHAT EXTENT DOES THE LEGISLATURE PRIORITISE ANTI-CORRUPTION AND GOVERNANCE AS A CONCERN IN THE COUNTRY?

Parliament, or the Island Council, has adopted several regulations to counter corruption and promote good governance, but has not prioritised the monitoring of implementation and compliance with the new provisions.

None of Parliament's initiative law proposals focus on anti-corruption. However, over the last few years, Parliament has adopted a number of draft proposals initiated by the Executive which prioritise anti-corruption and good governance. Thus, for example, after the fall of the first Curaçao government, the interim cabinet drafted a new regulation in order to ensure effective screening of future cabinet members. Parliament prioritised its passing. Also, most recently, Parliament has voted in favour of a motion requesting the Council of State to advise on all legal possibilities to hold public officials accountable for possible acts of mismanagement, waste of money and breaking the law.[253]

Most legislative proposals were adopted in the run-up to the constitutional changes, and as part of the agreements between the Kingdom partners to reorganise constitutional arrangements. Most notably, already in 2009, legislation to promote good governance in public companies and foundations was introduced, that is, an ordinance on corporate governance, a corporate governance

[249] See, for example, Cft, February 2013, point 27b.
[250] Ibid.
[251] See, for example, 'Government sidetracks Parliament' (*Regering zet Staten buiten spel*), 16 August 2012, via www.kkcuracao.com [accessed 12 April 2013].
[252] 'Motion public register adopted' (*Motie openbaar register aangenomen*), 20 February 2013, via www.versgeperst.com [accessed 16 April 2013].
[253] 'Rosaria happy with passed motion' (*Rosaria blij met aangenomen motie*), 21 January 2013, via www.versgeperst.com [accessed 22 May 2013]. The motion itself was not found on Parliament's website.

code and provisions related to the appointment of an advisor on corporate governance.[254] Also, and prior to October 2010, the Island Council approved legislation to protect the integrity of the Minister to regulate the legal and material rights and obligations of civil servants, including those of Parliament's Administration, to regulate the finances of political groups and to revoke membership of Parliament in case of an irrevocable conviction.

Some of these ordinances already existed in similar form in the Netherlands Antilles. However, several changes were made to strengthen the legal framework. Thus, for example, the ordinance regulating the rights and duties of civil servants now incorporates a provision which requires ministries to appoint a confidant for integrity issues, to advise civil servants confidentially how to deal with knowledge of possible breaches of integrity in the organisation. It also introduces the requirement to actively register additional functions. (This is discussed in more detail in Chapter VII.4 Public Sector). Other legislation is new, most notably the legislation on the financing of political parties, legislation that was conceived for many years. The ordinance is an important provision to govern financial oversight of political parties, although it does currently contain several loopholes which limit its effectiveness. (Also refer to Chapter VII.10 Political Parties.)

On the negative side, however, monitoring the implementation of and compliance with the new laws enacted has not been prioritised by Parliament, and many of the aforementioned legislative provisions are yet to be put into practice. (Also refer to Chapter VII.2 Executive.)

[254] Island ordinance Corporate governance (*Eilandsverordening Corporate governance*), Official Curaçao Gazette 2009, No.92; Island decree Code corporate governance Curaçao (*Eilandsbesluit Code corporate governance Curaçao*), Official Curaçao Gazette, 2009, No.96.

VII.2 EXECUTIVE

STRUCTURE AND ORGANISATION

As of 10 October 2010, the government of Curaçao consists of the king and ministers. The king is head of the government and as such is represented by the governor.[255] The governor is appointed by royal decree for a period of six years, to be reappointed once at most.[256] Ministers – up to nine – are to be appointed and dismissed by Country Decree.[257] In the process of government formation, the governor appoints an (in)formateur to form a coalition government which is supported by Parliament.[258] The ministers together make up the Council of Ministers, which is chaired by the prime minister as *primus inter pares*.[259] The Council is supported by a Secretariat.

So far, the new country has had four cabinets. The Cabinet-Schotte was in office from 10 October 2010 to 29 September 2012. It was followed by an interim cabinet, the Cabinet-Betrian, from 29 September 2012 to 31 December 2012. The Cabinet-Hodge was installed on 31 December 2012 and was succeeded by the Cabinet-Asjes on 7 June 2013. The cabinet is made up of the prime minister and eight other ministers, each in charge of a ministry.[260]

The powers and responsibilities of the governor are laid down in the Charter for the Kingdom of the Netherlands, a Kingdom Act[261] and in the Constitution. The powers and responsibilities of the (Council of) Ministers are also laid down in the Constitution and in the Rules of Procedure of the Council of Ministers.[262]

An important difference with the former Executive of the island territory is that, whereas they previously formed a collegial board, ministers in Curaçao are now individually responsible to Parliament.[263] However, ministers are also to deliberate and decide jointly on overall government policy and to promote the unity of that policy.[264] This implies that some issues are to be decided upon collectively in the Council of Ministers. These issues include draft legislation related to general government policy, proposals with budgetary consequences which cannot be agreed on with the minister of finance, as well as appointment and dismissal procedures for several top-level public servants.[265] Ministers who find a decision to be in conflict with their responsibility may see to it that such is noted, but they are never to act against a decision of the Council of Ministers.[266] They may also, of course, step down. In all other instances – even though in some cases deliberation within

[255] Charter for the Kingdom of the Netherlands (*Statuut voor het Koninkrijk der Nederlanden*), 2010, Bulletin of Acts and Decrees 2010, No. 775, Article 2; Constitution of Curaçao (*Staatsregeling van Curaçao*), Official Curaçao Gazette 2010, No. 86, Article 28. (Below: Constitution.)
[256] Kingdom Act of 7 June 2010, regarding Regulations of the Governor of Curaçao (*Rijkswet houdende Reglement voor de Gouverneur van Curaçao*), Bulletin of Acts and Decrees 2010, No.341, Article 1.
[257] Constitution, Article 32.
[258] L.J.J. Rogier, Principles of Caribean Constitutional Law (*Beginselen van Caribisch Staatsrecht*) (Den Haag: Boom Juridische Uitgevers, 2012), p.157.
[259] Constitution, Articles 29 and 33 and the explanatory memorandum of Article 29.
[260] Gobièrnu di Kòrsou, 7 June 2013, Press notice. 'Cabinet Asjes sworn into office' (*Kabinet Asjes beëdigd*).
[261] Kingdom Act of 7 June 2010, regarding Regulations of the Governor of Curaçao.
[262] Country decree of 7 February 2012, no.12/1396, regarding the publication in the Country Gazette of the Regulations of the Council of Ministers (*Landsbesluit houdende de bekendmaking in het Publicatieblad van het reglement van orde voor de raad van ministers)*, Country Gazette 2012, No.14 (Below: Rules of Procedure.)
[263] Constitution, Article 28.
[264] Ibid., Article 33.
[265] Rules of Procedure, Article 4.
[266] Ibid., Article 15.

the Council of Ministers is mandatory[267] – decision-making power remains with the individual minister concerned.

Politically, the governor is shielded by the Constitution. At the country level, apart from his/her role in the process of government formation, he/she does not have a political responsibility of his/her own. Although the governor is required to sign country ordinances and country decrees, the counter-signature of one or more individual ministers means they, and not the governor, are politically responsible for the governor's acts as head of government.[268] The assessment in this chapter therefore focuses on the Council of Ministers and its individual ministers as 'the Executive', and only addresses the governor where it is thought relevant to refer to his/her capacity as representative of the Kingdom government. Also, the public sector as a whole, including the ministries, is assessed in Chapter VII.4 Public Sector, and only relevant in this chapter in so far as the management of those ministries by the different ministers is concerned.

ASSESSMENT

Capacity

Resources (practice)

Score: 50

TO WHAT EXTENT DOES THE EXECUTIVE HAVE ADEQUATE RESOURCES TO EFFECTIVELY CARRY OUT ITS DUTIES?

The Executive appears to receive adequate funds to effectively carry out its duties, but there is a potential weakness in the selection of ministers themselves. The aftermath of the reorganisation of the civil service is also likely to negatively affect the Executive's effectiveness.

As part of its programme to structurally improve its public finances, the Executive is attempting to reduce its expenditure. Nevertheless, this assessment did not return any indications that the resources available to the Executive are not adequate to enable it to effectively carry out its duties, although according to one expert there are some indications that more specialised knowledge to support the Executive could be of use, and fulfilling specialised functions sufficiently is not always possible. Also, so far, the Executive has roughly complied with the freeze on vacancies imposed on all ministries since July 2012. The freeze only makes exceptions for so-called 'critical functions', allowing the Executive to sufficiently safeguard its services.[269]

Several experts interviewed mentioned the quality of ministers themselves as one of the key resources to allow the Executive to function effectively, and potentially one of its key weaknesses. Although there appears to be an increased awareness among political parties that effective use of executive power requires other qualities than effective use of parliamentary power, this is not yet consistently reflected in all appointment processes. Thus, appointing those with the necessary skills

267 Ibid., Article 5.
268 Constitution, Article 34.
269 'Freeze on vacancies at ministries' (*Vacaturestop bij ministeries*), 9 July 2012, via www.versgeperst.com [accessed 5 June 2013].

and experience to the Executive is still considered to be the exception to the rule, that is, to have politicians voted into Parliament appointed as minister. It was further suggested that sometimes loyalty to political leadership is considered more relevant than the ability to effectively carry out one's duties. Another potential weakness affecting this ability is related to the reorganisation of the Executive's administration, brought about by the constitutional changes. (For a more detailed discussion, refer to the section on Public sector management.)

As for financial compensation, the Constitution provides for the salaries, pensions and other financial provisions of ministers to be regulated by country ordinance.[270] As yet, however, no such ordinance has been enacted and previous ordinances regulating this for the Netherlands Antilles were not incorporated in the legislative framework of the country of Curaçao.[271] Thus, at present, financial provisions available for ministers are mostly unregulated, although in practice it was reported that for pensions, reference is made to the previous ordinance.[272]

The Council of Ministers is supported by the Secretariat of the Council of Ministers, which employs around six people.[273] The Secretariat falls directly under the responsibility of the minister of general affairs as chair of the Council, and supports the Council in preparing and organising its meetings and decision-making. It also has a process coordinating function.

Independence (law)

Score: 75

TO WHAT EXTENT IS THE EXECUTIVE INDEPENDENT BY LAW?

At the country level, the constitution contains several provisions to safeguard its operational independence in dealing with internal affairs. There are, however, no provisions regulating lobbying activities. At the Kingdom level, cooperation by the different countries within the Kingdom is required.

The Charter for the Kingdom of the Netherlands defines, among other things, the defence of the Kingdom, foreign relations, and issues related to Dutch nationality as Kingdom affairs. These Kingdom affairs are to be conducted in cooperation by the different countries of the Kingdom. Legislative power in these affairs is to be exercised by the legislature of the Kingdom, a process which involves the parliaments of the different countries.[274] Internal affairs, that is, affairs other than Kingdom affairs, are to be managed autonomously. These include the realisation of fundamental rights and freedoms, legal certainty and good governance, although the safeguarding hereof is a Kingdom affair.[275] (Also refer to the section on Accountability.)

At the country level, the position of the government is established in the Constitution, which defines both its executive and legislative powers. The latter is shared with Parliament where it concerns country ordinances, but government and – if powers are delegated – individual ministers are

[270] Constitution, Article 37.
[271] Cf. Appendix A of the country ordinance changing the General transitional regulation legislation and government country Curaçao (*Landsverordening tot wijziging van de Algemene overgangsregeling wetgeving en bestuur land Curaçao),* Official Curaçao Gazette 2010, No.102.
[272] Also refer to Goverment working to correct legislation negative list (*Regering werkt aan reparatie wetgeving negatieve lijst*), *Amigoe*, 10 September 2011.
[273] Personnel as listed in the annex Statement of salaried personnel (*Staat van het te bezoldigen personeel),* Budget 2013, Country Gazette 2013, No.10.
[274] Charter for the Kingdom of the Netherlands, Articles 3 and 4, and Section 2.
[275] Ibid., Articles 41 and 43.

competent to adopt other regulations, that is, country and ministerial decrees.[276] They may also issue administrative decisions and orders.

Ministers are accountable to Parliament, and require its confidence to execute their powers.[277] In that sense, they are not independent. However, in executing their tasks, ministers are to act independently. To underscore this and prevent conflicts of interests, the Constitution declares several other functions incompatible with that of a minister, such as that of the (substitute) governor or the minister plenipotentiary, member of one of the High Councils of State, and of a public official. This also implies a minister may not simultaneously be a member of Parliament, although there is a provision which allows a minister to combine his/her function with that of member of Parliament for, at most, three months after admission to Parliament.[278]

In addition, because of the small size of the Curaçao community and to prevent overly tight personal ties within the Council of Ministers, the Constitution rules out blood relations[279] between ministers, although not other family ties.[280] The independence of the ministers is further safeguarded because the governor, in his/her capacity representing the head of government, may attend meetings of the Council of Ministers, but only has consultative powers.[281] Also, in view of the separation of powers, the Constitution rules that the Council of Ministers is to determine its own rules of procedures independently.[282]

There are no provisions regulating lobbying activities.

Independence (practice)

Score: 50

TO WHAT EXTENT IS THE EXECUTIVE INDEPENDENT IN PRACTICE?

There are some concerns of undue influence of political parties on the decisions and activities of the Executive, also related to party financing. The Executive is also approached by lobbyists, but it cannot be determined to what extent this affects its independence.

The assessment did not return clear examples of undue influence on the Executive from Parliament in practice. There were also no examples provided of undue influence of the judiciary on the Executive. (Also refer to Chapter VII.1 Legislature and Chapter VII.3 Judiciary.)

However, there are some concerns related to the significant impact of political parties on the functioning of both Parliament and the Executive, blurring the constitutionally prescribed division of powers. As one expert indicated, political interventions at all stages leave little room for manoeuvre for the Executive in its decision-making processes. This was illustrated, for example, when in 2011 two ministers of Curaçao's first government took opposite standpoints with regard to a data centre to be established in Curaçao. This was later attributed to 'miscommunication'.[283] To better protect the unity of government policy, not the government but the political leaders of the coalition partners – two of which were ministers, one a member of Parliament – promised to place more emphasis on the communication between themselves, between the chairmen of the political groups in Parliament

[276] Constitution, Articles 74 and 83.
[277] Ibid., Articles 28 and 29 and the explanatory memorandum to those articles.
[278] Ibid., Article 30 and the explanatory memorandum to that article. Also refer to Article 38.
[279] The official term is consanquinity to the second degree.
[280] Ibid., Article 31.
[281] Ibid., Article 33. Also refer to Rules of Procedure, Article 2.
[282] Constitution, Article 33 and the explanatory memorandum to that article.
[283] 'Miscommunication within coalition' (*Miscommunicatie in coalitie*), 2 July 2011, via www.versgeperst.com [accessed 16 May 2013].

and during the regular coalition meetings.[284] More recently, the Executive was specifically appointed for a short period to act within a 'clearly defined and firm mandate' of the coalition partners.[285] While it was preparing to decide on one of the issues mandated, (the location of a new hospital), the coalition parties within Parliament passed a motion tightening its room for manoeuvre considerably.[286] The Executive responded that it would leave the decision to Parliament, but also indicated that it did not want to be liable for any claims based on that decision.[287]

It is unclear to what extent third parties have undue influence over the Executive, although the assessment did return some information. Members of the Executive are approached by third parties of the business sector and by representatives of the non-profit sector. In addition, when deemed necessary to push a specific project through the wheels of bureaucracy, people do not hesitate to ask former politicians to contact individual ministers. Most worryingly, it was reported that in some cases, threats were involved, including verbal, physical and armed threats. However, it has not been possible to assess whether, in practice, this lobbying and these threats resulted in undue influence over the Executive's decisions. (But also refer to the section on Integrity.)

Also, as there is no transparency in political party finances, it cannot be determined whether and to what extent external financiers influence the operations of the Executive. (For a more detailed discussion, refer to Chapter VII.10 Political Parties.)

Governance

Transparency (law)

Score: 25

TO WHAT EXTENT ARE THERE REGULATIONS IN PLACE TO ENSURE TRANSPARENCY IN RELEVANT ACTIVITIES OF THE EXECUTIVE?

There are several provisions for transparency of the government budget and other legislation. However, provisions to ensure transparency of administrative decisions and all (non-confidential) documents sent to Parliament are less adequate. There are hardly any transparency provisions concerning meetings of the Council of Ministers, and no provisions requiring public disclosure of assets and related information.

Ministers are constitutionally required to observe the right of public access to information in the exercise of their duties.[288] This is further detailed in the country ordinance on public access to government information. This requires every administrative authority, that is, the minister it directly concerns, to observe this right and provide information when asked, unless there are sound reasons not to do so. The latter is the case if, for example, the unity of government policy is at stake or if providing the information does not outweigh economic or financial interests of the country.[289] In addition, the right of public access implies the right to proactive provision of information on

[284] Ibid.
[285] Coalition agreement aimed at peace, tranquility and prosperity, period 2012-2016 (*Akuerdo pa un Gobernashon enfoká riba pas, trankilidat i prosperidat, period 2012-2016*), 12 December 2012, p.2.
[286] Parliament of Curaçao, Motion II of 11 April 2013 (*Moshon II*), via www.parlamento.cw [accessed 16 May 2013].
[287] 'Hodge not liable choice hospital location' (*Hodge niet aansprakelijk keuze hospitaalterrein*), 12 April 2013, via www.qcuracao.com [accessed 2 May 2013].
[288] Constitution, Article 91.
[289] Country ordinance on public access to government information (*Landsverordening Openbaarheid van bestuur Curaçao*), Official Curaçao Gazette 2010, No.87, Appendix t, Articles 2 and11.

administrative matters, that is, all matters of relevance to the policies of an administrative authority, including the preparation and implementation of such policies.[290]

More specifically, the right of access to legislation is provided for to the degree that the minister of general affairs is to publish legislative acts in either the Country Gazette or the Official Curaçao Gazette. This includes all country ordinances as well as all country and ministerial decrees. The minister of general affairs is also required to publish several – but not all – administrative decisions, that is, those legally required to be published in one of the two gazettes, for example, some decisions related to building permits, dispossession, or the appointment of officials entrusted with supervisory and detection powers.[291]

Moreover, as mentioned in the previous chapter, to enhance transparency of the legislative process, the minister of general affairs is also required to make public all *draft* ordinances when submitting those ordinances for approval to Parliament, together with the Council of State's advice and government's reply to that advice.[292] Transparency provisions are even more explicit with respect to the government budget. Thus, for example, because the budget process is 'crucial for a proper operation of the parliamentary democracy', all draft budgets, draft budget amendments and draft annual accounts are to be published 'immediately' after their submission to Parliament. Publishing on the internet is optional and suggested in the explanatory memorandum, but not required.[293] Government is also required to publish its personnel decisions as well as an overview of Curaçao's finances on a monthly basis in local newspapers.[294]

On the negative side, however, although 'all documents to be provided to Parliament are, in principle, public'[295] and several experts confirmed that indeed this is also commonly understood to be the case, there is no solid legal provision to safeguard this and require the Executive to publish its (non-confidential) information proactively. And although a central register of all legislation may be established, this is not mandatory.[296] Similarly, there are no provisions requiring the government to maintain a public central register of all administrative decisions. There are no provisions requiring publication on the internet. Also, the country ordinance on administrative law does not contain any explicit provisions related to notification, communication and public preparatory procedures, although some individual ordinances do contain such provisions.[297] Moreover, the law does not require ministers to publicly disclose income, assets, gifts, business or personal interests, nor additional functions or activities. Ministers are also not required to publicly report on official missions. (Also refer to the section on Integrity, below.)

Deliberations in the meetings of the Council of Ministers are to take place behind closed doors, and there are no specific regulations to ensure that the content of sessions of the Council of Ministers is accessible to the public.[298] All that passes within chambers is to remain confidential, unless the Council decides otherwise or in as far the execution of the decisions requires the information to be made public.[299] However, the Council is required to publish its rules of procedure.[300]

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[290] Ibid., Article 8.
[291] Proclamation ordinance (*Bekendmakingsverordening*), Official Curaçao Gazette 2010, No.87, Appendix i, Article 5.
[292] Country ordinance Council of State, Article 27. Also refer to the country ordinance on public access to government information, Article 10.
[293] Country ordinance Government accounts 2010 (*Landsverordening Comptabliteit 2010*), Official Curaçao Gazette 2010, No.87, Appendix b, Article 8 and the explanatory memorandum, general part I.3.
[294] Island ordinance containing rules regarding the requirement of the Island Executive to periodically publish policy information (*Eilandsverordening houdende regels inzake de verplichting van het Bestuurscollege tot periodieke publikatie van beleidsinformatie*), Official Curaçao Gazette, 1998, No.4, Articles 1 and 2. Also refer to Offical Curaçao Gazette, 1998, No.82.
[295] Country ordinance Government accounts 2010, explanatory memorandum to Article 8.
[296] Proclamation ordinance, Article 12.
[297] Compare the Dutch General administrative law Act (*Algemene wet bestuursrecht*), for example, Division 3.4 and Division 3.6.
[298] Rules of Procedure, Article 10.
[299] Ibid., Article 19 and the explanatory memorandum of that article.

Transparency (practice)

Score: 25

TO WHAT EXTENT IS THERE TRANSPARENCY IN RELEVANT ACTIVITIES OF THE EXECUTIVE IN PRACTICE?

The Executive does publicise laws in paper editions of its national bulletins and it regularly talks to the press. Other than that, at the moment, it provides very little to inform the general public about its activities. As a result, it is not always transparent what legislation applies, what powers are delegated to whom, nor how the Executive in practice uses its power granted. Information on the implementation of the country ordinance on public access to government information is not available.

Each year, the minister of general affairs is to send Parliament a report on the implementation of the country ordinance on public access to government information.[301] However, no such reports are available for the period under consideration, and Transparency International was unable to determine independently how the ordinance has been implemented in recent years. Also, although legally all information related to administrative policies – with a few exceptions – is to be made available, there is a general lack of overview of what decisions and activities are undertaken, in practice limiting the possibilities to request disclosure. When asked, one expert interviewed suggested that, generally speaking, the current legislation has not been very effective in increasing transparency in activities of the Executive. This was confirmed by another expert, who added that ministers have a 'wait and see' attitude towards Parliament, and are not sanctioned when they do not (or not in time) provide information they are legally required to provide. (Also refer to Chapter VII.1 Legislature).

The government does have a website to inform the public about its activities. However, the website is currently under revision. At the time of writing it is not accessible and has been unavailable since the beginning of March 2013.[302] The previous website was not maintained for several months. The public can phone, mail or visit the *Bentana di Informashon*, the government's information desk designed to provide the public with information on government products and services. This information desk, however, mainly serves as the first port of call for those who need government services related to, for example, permit procedures, motor vehicle inspection and passport renewal.

Legislation is published in Curaçao's official bulletins, and this is, as far as could be determined, also true for those administrative decisions required to be published. Some documents, such as the rules of procedure of the Council of Ministers, are also published as required, albeit sometimes considerably later than coming into force.[303] However, although the government is reported to be working on it, there currently is no easily accessible central register of all legislation – country ordinances and country and ministerial decrees – in place. Neither are there easily accessible public registers of administrative decisions. Thus, for example, overviews of building permits issued, which used to be made available periodically, are no longer made public. Exceptions notwithstanding, the Executive also does not proactively provide draft legislation or any other document sent to Parliament, although some draft legislation is now made available through Parliament's website. Important information on the budget and accounting is also not always timely, or is not accessible to the public. Reports from the administration's internal auditor (*SOAB – Stichting*

[300] Constitution, Article 33.
[301] Country ordinance on public access to government information, Article 15.
[302] www.gobiernu.cw [accessed 14 June 2013].
[303] The rules of procedure of the Council of Ministers came into force on 10 October 2010 and were published in the country's official publication journal in March 2012.

Overheidsaccountantsbureau) are not made public.[304] Also, information required to be published on personnel and finance developments is published neither consistently nor completely. As a result, it is not always transparent what legislation applies, what legislative and administrative powers are delegated to whom, nor how the Executive uses its powers granted.[305] This also implies it is not transparent whether or not the Executive, when taking administrative decisions, commits to the general principles of proper administration (*algemene beginselen van behoorlijk bestuur*).

On the positive side, it has become customary for the prime minister to inform the press on a weekly basis, or as often as deemed necessary, after meetings of the Council of Ministers, and to be interviewed for radio and television.[306] Those decisions which by their nature are to be made public are reported to be published on the government's website , although, as noted above, this is currently difficult to verify. When asked, further information about the meetings is reported to be provided by the Secretariat of the Council of Ministers. Also, although the Executive is not required to publicly report on official missions, in some instances it does.[307]

Accountability (law)

Score: 100

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT MEMBERS OF THE EXECUTIVE HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS?

There are many provisions in place to ensure that ministers can be held accountable politically, both at the country as well as the Kingdom level. Ministers can also be held accountable in civil and criminal proceedings.

Ministers are first and foremost accountable ('responsible') to Parliament. A minister who no longer has the confidence of Parliament is to step down ('the rule of confidence').[308] To enable Parliament and the Executive to apply this rule in practice, as mentioned in the previous chapter, ministers are required to respond to questions and to appear before Parliament if summoned. There are a number of additional provisions which require the Executive actively to report to Parliament. Thus, for example, each year, at the beginning of the parliamentary year, Parliament is to be informed of the government's proposed policy, and government is to hand in a balanced budget.[309] In the course of the year and after the year's closing, government is also required to account for the revenues and expenditures of the country, and to provide Parliament with an annual account, examined by the administration's own internal auditor as well as the Court of Audit (*ARC – Algemene Rekenkamer Curaçao*). This account must also include a recounting to what extent the policy proposals formulated have been realised.[310] Similar duties for the Executive to report back to Parliament are included, for example, in the recently adopted health care ordinance, the ordinance on reporting

[304] Cft, February 2013. Report of findings. PEFA-assessment financial management Curaçao (*Rapport van bevindingen. PEFA-inventarisatie financieel beheer Curaçao*), p.5.
[305] See, for example, Arjen van Rijn, 'In search of the Constitition' (*Speurtocht naar de nieuwe staatsregeling*), *Amigoe*, 28 February 2011.
[306] Rules of Procedure, explanatory memorandum to Article 3.
[307] See, for example,14 March 2012, General report on account of visit to the Netherlands by Prime Minister Hodge (*Algemeen verslag naar aanleiding van bezoek Nederland premier Hodge*), via www.parlamento.cw [accessed 16 May 2013].
[308] Charter for the Kingdom of the Netherlands, Article 2; Constitution, Articles 28 and 29 and the explanatory memorandum to Article 29. Also see Rogier, 2012:127.
[309] Constitution, Articles 54 and 85.
[310] Ibid., Article 85. Country ordinance Government Accounts, Articles 33, 50 and 51. Also refer to Article 42 and the Kingdom Act Financial Supervision Curaçao and Sint Maarten, Article 18.

unusual transactions, as well as in the ordinance on state property (*domaniale gronden*).[311] However, not all laws contain explicit provisions to do so.[312]

The Executive is also required to give reasons for its decisions. For example, the government is required to account for the budget, and provide information on proposed activities and expected outcomes and report on them once the year is over.[313] Ministers are also required to give reasons for proposed decisions in the field of corporate governance. For example, if they decide not to act in accordance with a serious objection of the government's advisor on corporate governance in relation to a specific dismissal or appointment procedure, they are to state their reasons.[314] There are also several – albeit varying – provisions to ensure the Executive responds to advice or reports of the Council of State, the Court of Audit and the Ombudsman.[315] Similarly, the Executive is required to indicate to what extent it has taken into account advice or reports of the Board of Financial Supervision (CFT) and the Law Enforcement Council (*RvdR – Rijkswet Raad voor de Rechtshandhaving*).[316] An explicit provision to provide reasons for administrative decisions taken, as well as other general principles of proper administration, is not explicitly provided for, but these principles are considered to be part of unwritten law.[317]

The Executive must also consult the platform of public sector unions, the CCvV, on all matters of general interest to the legal position of civil servants, and it may not decide before CCvV has been consulted.[318] The Executive is *not* required to consult the Social and Economic Council (SER), one of its advisory boards. However, *if* the Council publishes a report, the Executive is required to inform Parliament on its position.[319]

Formally, Parliament's approval of the annual accounts discharges the Executive of its responsibility for its policies and management.[320] However, ministers may still be held accountable in legal proceedings, although they do – similar to members of Parliament – enjoy certain immunity within chambers of Parliament. First, as is further discussed in Chapter VII.4 Public Sector, ministers, in a very general sense, can be held accountable in administrative law procedures by the public in their relation with the government.[321] However, members of the Executive can also be held personally

[311] Country ordinance Health care insurance (*Landsverordening Basisverzekering ziektekosten*), Country Gazette 2013, No.3, Article 10.7; country ordinance of 26 October 2009 to amend the country ordinance Reporting unusual transaction (*Landsverordening van de 26ste October 2009 tot wijziging van de Landsverordening melding ongebruikelijke transacties*), Country Gazette 2009, No.65, Article V; country ordinance State property (*Landsverordening Domaniale gronden*), Official Curaçao Gazette 2010, No.87, Appendix u, Article 11.
[312] See, for example, the country ordinance Finances of political groups (*Landsverordening Financiën politieke groeperingen*), Official Curaçao Gazette 2010, No.87, Appendix l and the country ordinance Integrity (candidate) ministers (*Landsverordening Integriteit (kandidaat-) ministers*), Country Gazette 2012, No.66.
[313] Country ordinance Government accounts, Article 14. Also see Articles 18 and 23.
[314] Island ordinance Corporate governance, Official Curaçao Gazette 2009, No.92, Articles 8, 9 and 10.
[315] For example, country ordinance Council of State (*Landsverordening Raad van Advies*), Official Curaçao Gazette 2010, No.87, Appendix q, Article 27, country ordinance General Court of Audit Curaçao (*Landsverordening Algemene Rekenkamer Curaçao*), Official Curaçao Gazette 2010, No.87, Appendix h, Article 28, country ordinance Ombudsman (*Landsverordening Ombudsman*), Official Curaçao Gazette 2010, No.87, Article 25.
[316] For example, Kingdom Act Financial Supervision Curaçao and Sint Maarten (*Rijkswet financieel toezicht Curaçao en Sint Maarten*), Bulletin of Acts and Decrees, 2010, No.334, Article 11; Kingdom Act Law Enforcement Council (*Rijkswet Raad voor de Rechtshandhaving*), Bulletin of Acts and Decrees, 2010, No.338, Article 30.
[317] Cf. country ordinance Administrative law (*Landsverordening administratieve rechtspraak*), Country Gazette 2006, No.71. Compare the Dutch General administrative law Act (*Algemene wet bestuursrecht*), for example, Division 3.7.
[318] Country ordinance Organised consultations in matters relevant to civil servants (*Landsverordening Georganiseerd overleg in ambtenarenzaken*), Country Gazette 2008, No.70, Article 10.
[319] Country ordinance Advisory boards (*Landsverordening Adviescolleges*), Offical Curaçao Gazette 2010, No.87, Appendix g, Article 24. Also refer to country ordinance Social Economic Council (*Landsverordening Sociaal-Economische Raad*), Offical Curaçao Gazette 2010, No.87, Appendix p.
[320] Country ordinance Government accounts 2010, Article 52.
[321] See country ordinance Administrative law.

liable in criminal and civil proceedings. In the former case, ministers may, for example, be prosecuted for abuses of office. Specifically, ministers who countersign legislation knowing it violates higher-order law or any other legislation in force in Curaçao, or who intentionally fail to implement legal provisions in as far implementing those provisions is their responsibility, may be imprisoned or fined.[322] (Also refer to the section on Integrity.) In the latter case, in case of unlawful acts, this requires among other things that the violated standard of behaviour must intend to offer protection against damage suffered.[323] As of 1 January 2012, a civil inquiry procedure to request an investigation into the policy and affairs within legal persons, such as public companies, may also serve to hold ministers – in their capacity as representatives of the shareholder – accountable.[324]

If a minister is suspected of an abuse of office, the authorities of the public prosecutor are executed by the procurator general or someone appointed by him/her.[325] In some specified cases, the right to public office or the right to vote and be elected can be revoked.[326]

Also, both the governor – in his/her capacity as Kingdom organ – as well as the Board of Financial Supervision and the Law Enforcement Council – in their capacity as advisors to the Kingdom Council of Ministers – may find reason to bring matters to the attention of the Kingdom Council of Ministers. In some specified cases, the Kingdom Council of Ministers may decide to instruct the Executive, for example, to adjust its budget to comply with the Kingdom Act of Financial Supervision.[327] If the problem cannot be redressed within the country, as an *ultimum remedium*, the Kingdom government may act and can suspend or annul legislation that conflicts with higher-order law.[328] In addition, as noted earlier, there is some possibility for constitutional review at the country level.[329] (Also refer to Chapter VII.1 Legislature.)

Accountability (practice)

Score: 25

TO WHAT EXTENT IS THERE EFFECTIVE OVERSIGHT OF EXECUTIVE ACTIVITIES IN PRACTICE?

The accountability provisions in place are not very effective, primarily because Parliament is largely inactive in questioning the activities and policies of the Executive. Civil and criminal proceedings are rare, although there now is increased attention towards these proceedings.

The Executive submits information to Parliament and participates in its sessions. However, several experts noted that there does not appear to be a strong conviction among ministers that being a minister implies being accountable to Parliament, not only when summoned by or to Parliament, but also proactively. For one, questions of members of Parliament are not always answered, and sometimes only after a considerable length of time. In addition, important information about the

[322] Penal Code, Book 2, for example, Article 2:344. Also refer to Article 2:345.
[323] Civil Code, Book 6, Articles 162 and 163.
[324] Ibid., Book 2, Article 271.
[325] Code of Criminal Procedure, Article 476.
[326] Penal Code, Book 1, Articles 1:64 and 1:65. Also see, for example, Penal Code, Book 2, Article 2:364.
[327] Kingdom Act Financial Supervision Curacao and Sint Maarten, Article 13, also refer to, for example, Articles 12, 14 and 17. Kingdom Act on the Law Enforcement Council, Article 32. These Acts are based on Article 38 of the Charter for the Kingdom, based on consensus.
[328] Charter for the Kingdom, Articles 43 and 50. For a description of the process envisioned with safeguarding the interests mentioned, see The Kingdom's role of safeguarding. The safeguarding of rights and freedoms, legal certainty and good governance in the Kingdom of the Netherlands. (*Waarborgfunctie Koninkrijk. Het waarborgen van rechten en vrijheden, rechtszekerheid en deugdelijk bestuur in het Koninkrijk der Nederlanden)*, 15 July 2011.
[329] Constitution, Article 101.

budget and annual accounts is often provided only after a considerable delay.[330] When information is provided, the quality of that information is often considered to be insufficient. Thus, for example, the Court of Audit recently concluded that 'information included in Curaçao's annual account of 2011 provides insufficient insight into accomplished performances and effects. […]. Because of the lack of sufficiently specific and measurable policy information, the government does not fully account to Parliament and is thus not transparent enough'.[331] Moreover, the lack of transparency noted in the above also implies it cannot be assessed whether or not the Executive commits to the general principles of proper administration when taking administrative decisions.

Parliament, for its part, does not hold the Executive sufficiently accountable. Although there are, of course, exceptions, Parliament is largely ineffective in questioning the activities and policies of the Executive, and often tolerates an Executive whose actions are not necessarily in line with its legally prescribed tasks or with its policy plans. When it does act towards the Executive, it is not so much the Legislature but the political leadership of the coalition partners in Parliament which does so, 'instructing' the Executive to take or not take certain decisions. (Also refer to the section on Independence and Chapter VII.1 Legislature.)

The Court of Audit of Curaçao and the administration's internal auditor, do audit the Executive as required. However, the scope and nature of the audit of the government's annual account is as yet considered to be 'not adequate'. Also, recommendations of both institutions have so far either not been followed up or only with delay.[332] Similarly, the corporate governance advisor now scrutinises all appointment and dismissal proposals of government related to public companies and foundations, and has increased transparency of these decisions to a large degree. However, the advisor's advice is not always followed, not even when the advisor has voiced serious objections against, for example, proposed dismissals of board members. In 2011 this led to three law suits, all of which were ruled in favour of the board members.[333]

The Executive does from time to time intensify its efforts to consult the public. Thus, for example, the Cabinet-Schotte did so 'using a method based on citizens' participation',[334] whereas the Cabinet-Betrian started a 'national dialogue' with the community-at-large, which was continued by the Cabinet-Hodge.[335] However, in the former case, efforts to use this method when developing social infrastructural projects went hand in hand with a funding construction for these projects which appeared to have no legal basis and decreased government's accountability.[336] In the latter case, initial responses were positive and a dialogue with social partners, such as those committed to *Kolaborativo*, appeared to be reinstalled.[337] Later, the Executive was criticised for not taking the provided input seriously,[338] and, according to some experts interviewed, effective consultation is still lacking. (Also refer to Chapter VII.13 Business.)

In addition, although intervention to safeguard, for example, legal certainty and good governance has been suggested from time to time, in practice the Council of Ministers of the Kingdom has never used this *ultimum remedium* to hold the Executive accountable, and its possibility is said mostly to

[330] Cft, February 2013. Report of findings. PEFA-assessment financial management Curaçao (*Rapport van bevindingen. PEFA-inventarisatie financieel beheer Curaçao*), p.34-35.
[331] Court of Audit Curaçao, 19 April 2013, Inquiry into the availability of policy information in the annual report 2011 of Curaçao. (*Onderzoek naar de beschikbaarheid van beleidsinformation in het jaarverslag 2011 van Curaçao*), p.6 and p.8.
[332] Cft, February 2013:29, 33.
[333] STBNO, Cft, February 2013:37.
[334] Prime Minister Schotte's address to Parliament, One year later. Politics and rule of law in Curaçao (*Een jaar later. Politiek en rechtstaat in Curaçao*), 11 October 2011, p.42.
[335] See for example Budget 2013, General Considerations (*Algemene beschouwing*), p.9.
[336] 'Government established 5 cent-funds to pay off loan' (*Regeling stelde 5 cent-fonds in voor aflossing geldlening*), 17 October 2012, via www.amigoe.com [accessed 5 June 2013].
[337] *Kolaborativo*, Press notice. Stakeholders Recommit to the Code of Tripartism and Resume Urgent National Dialogue. 9 February 2013.
[338] See for example VBC, February 2013, Newsletter February 2013, www.vbcuracao.com [accessed 4 May 2013].

have ‘preventative significance’.[339] However, in 2012 the Council of Ministers of the Kingdom did issue an instruction to the Executive on the advice of the Board of Financial Supervision. The Executive followed the instruction, at least to an extent and only after a legal procedure which led to some amendments, and prepared several policy measures to satisfy the relevant budgetary norms.[340] (Also refer to Chapter VII.8 Supreme Audit and Supervisory Institutions (Public Sector)).

Civil and criminal proceedings against ministers are very rare in practice, although in September 2012, the Public Prosecutor’s Office reported that, over the last few months it had been confronted with ‘politically related’ charges.[341] There have also been several suggestions of a former minister of finance being a suspect in an on-going criminal investigation, the ‘*Bientu*-investigation’, but this has never been officially confirmed.[342] (Also refer to Chapter VII.5 Law Enforcement Agencies.) However, as far as could be established, there have been no rulings in a civil proceeding convicting a minister of an unlawful act. There have been a few criminal cases, some of which led to convictions, but those were several years ago. Nevertheless, the issue is topical and in January 2013 Parliament passed a motion to request the Council of State’s opinion on possibilities to hold members of the Executive personally liable.[343] This investigation is on-going. Also, in February 2013, the Public Prosecutor’s Office announced it would request the start of a civil inquiry into the decision-making policies of several public companies *(Integrated Utility Holding NV (Aqualectra), Curaçao Oil (Curoil) NV, Curoil Gas NV and Refineria di Kòrsou NV)*. According to the Public Prosecutor’s Office, the investigation is to include the use of authorities of the shareholder as well as that of several members of the supervisory board. The Court schedules to rule on the request in July 2013.[344]

Integrity mechanisms (law)

Score: 50

TO WHAT EXTENT ARE THERE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF MEMBERS OF THE EXECUTIVE?

There are several strict provisions in place to ensure the integrity of members of the Executive. However, monitoring compliance is not sufficiently provided for. The Executive is not required to monitor gifts. Existing whistleblower provisions are insufficient.

The general integrity rules for civil servants do not apply to ministers.[345] However, in October 2012, after severe criticism of the screening process of the ministers of Curaçao’s first government[346] and prior to the elections, new and stricter legislation was introduced to replace earlier[347] regulations in place to ensure the integrity of members of the Executive. The current legislation covers the screening phase as well as the period in office, and also contains some provisions related to the

[339] See also ‘Intervention won’t happen’ (‘*Ingrijpen gebeurt nooit*’), 5 June 2013, Antilliaans Dagblad.
[340] See, for example, Budget 2013.
[341] Public Prosecutor, Press Notice of 17 September 2012, The Public Prosecutor and politically-related charges (*Het Openbaar Ministerie en politiek getinte aangiftes*).
[342] ‘Jamaloodin officially charged in Bientu case’ (*Jamaloodin officieel verdachte Bientu-zaak*), 1 November 2012, via www.versgeperst.com.
[343] ‘Rosaria happy with passed motion’ (*Rosaria blij met aangenomen motie*), 21 January 2013, via www.versgeperst.com. The motion itself was not found on Parliament’s website.
[344] Public prosecutor Curaçao supports FAS request, 14 February 2013, via www.amigoe.com [accessed 4 May 2013].
[345] Cf. country ordinance Legal and material rights of civil servants (*Landsverordening Materieel ambtenarenrecht*), Official Curaçao Gazette 2010, No.87, Appendix v, Article 2.
[346] See on this, for example, Commissie onderzoek Curaçao, Do it yourselves [*Doe het zelf*] (S.l.: Commissie onderzoek Curaçao: 30 September 2011); prime minister’s address to Parliament, 11 October 2011.
[347] On these earlier regulations, also see below, under Integrity mechanisms (practice).

post-employment phase. It includes several specific penalties for non-compliance, and may only be amended by Parliament with a qualified majority of two-thirds.[348]

Under the new regulations, before a candidate is to be recommended for office, several investigations are to be conducted at the request of the formateur. These include a judicial investigation, a report on tax behaviour, income and wealth and a report on possible suspect financial transactions. Candidates are also required to supply information about their business interests and other assets, as well as additional functions and activities.[349] A state security report is also to be prepared, in principle to be based on information already available within the Security Service Curaçao. The results of the investigations and inquiries are confidential. On their content no-one but the formateur and the governor is to be informed.[350]

A minister is not to be recommended for office if this 'does not agree with the outcome of these investigations'.[351] Also, candidates are, among other things, to sever all connections, short of divesting themselves of ownership, with their business interests and are to end their additional functions and activities.[352] If the formateur deems it necessary to prevent conflicts of interests, partners are to do so as well.[353] And before accepting office, ministers are constitutionally required to affirm or take an oath declaring that they have not given or promised anything to obtain their office and will not do so, and will not be bought (oath of purity – *zuiveringseed*), and will abide by the Constitution and promote the welfare of Curaçao to the best of their ability (oath of office – *ambtseed*).[354]

To protect the integrity of the position of a minister, that is, once in office, the new regulations also include some more strict provisions to ensure that ministers do not decide on issues – on their own or as a member of the Council of Ministers – when the decisions to be made concern their own or their family's business or personal interests. This applies to all issues that touch on interests of blood relations and relations by marriage.[355] Ministers must also notify the prime minister[356] of any relevant changes in their circumstances, which explicitly includes business or 'personal' interests which arise from inheritance rights or gifts.[357] They are not allowed to make arrangements for post-employment functions, unless explicitly approved by the prime minister.[358]

On the negative side, however, there are no provisions to make any of the abovementioned information available to Parliament or the general public, for example through a public register including (non-confidential) information on income and assets data, as well as indications of which measures were taken to deal with business and personal interests. Only in the case of a breach of the rules is Parliament to be informed.[359] Moreover, the current legislative framework does not include any obligation for the Executive to report on the application of the rules or on their effectiveness to Parliament, nor does it include any clear provisions to monitor compliance with or detect violations of the rules incorporated. Also, because the position of a minister is not classified as a position involving confidentiality (*vertrouwensfunctie*), no in-depth security screening is required. The latter is only on the agenda in case of a serious suspicion that the candidate threatens

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348 Country ordinance Integrity (candidate) ministers, Chapter 8 and Article 29.
349 Ibid., Article 2.
350 Ibid., Articles 2 and 8.
351 Ibid., Article 7. The Dutch text reads: '*zich niet verdraagt met de uitkomst van enig [onderzoek]*'.
352 Ibid.
353 Country ordinance Integrity (candidate) ministers, Article 10. Note that the legislation mentions 'additional functions', but presumably this also covers a partner's main employment or activity, if this could give rise to a conflict of interest.
354 Charter for the Kingdom, Article 47 and Constitution, Article 36.
355 County ordinance Integrity (candidate) ministers, Article 21. The official term is consanquineal and affinal relationship to the third degree.
356 It is not clear to whom the prime minister is to report.
357 Country ordinance Integrity (candidate) ministers, Article 13 and the explanatory memorandum on that article.
358 Ibid., Article 15.
359 Ibid., Article 16.

the democratic rule of law and the integrity of the public administration.[360] In view of Curaçao's small scale and the sometimes blurred divide between the Executive and its administration, this too can be considered an important loophole.[361] (Also refer to the section on Public sector management, below.) Also, although some 10 years ago an internal regulation requiring all gifts to be centrally registered was developed and successfully implemented, this regulation is no longer effective. According to an expert interviewed, successive cabinets did not comply with the regulation, and there is no system in place to effectively monitor compliance and enforce the rules. Thus, at the moment, there is no explicit requirement to register gifts, financial or otherwise, received while in office.

Indeed, according to some experts, the current legislation is in fact *too* strict.[362] Thus, for example, it not only rules out recommending for office a suspect in an on-going criminal investigation, but it also rules out recommending anyone – presumably ever – convicted for a criminal offence, without further qualifying this.[363] Also, if a minister – that is, in office – is regarded as a suspect in an on-going criminal investigation, he/she is required to hand in his/her resignation immediately. There are no provisions for suspension.[364]

Ministers are, as mentioned, not immune from prosecution and may be sentenced for abuses of office. This includes prosecution for bribery and extortion.[365] They may also be prosecuted for other offences, such as making public confidential information or withholding government property.[366] And ministers, as all appointed to the public service, are to report abuses of office and other related crimes of which they have become aware while carrying out their official duties, with a few exceptions, such as those related to the risk of incriminating themselves.[367] However, there are no comprehensive general provisions to protect whistleblowers[368] and the few provisions incorporated in the general civil servants regulations are presumably not effective in addressing integrity breaches of the Executive. This is because the procedure includes notification of a suspected integrity breach to a minister, who is then also responsible for further processing the report.[369] (Also refer to Chapter VII.4 Public Sector.)

Integrity mechanisms (practice)

Score: 50

TO WHAT EXTENT IS THE INTEGRITY OF MEMBERS OF THE EXECUTIVE ENSURED IN PRACTICE?

The current screening process still contains some vulnerabilities, and its effectiveness in practice cannot be assessed because of a lack of effective oversight.

The integrity regulations mentioned above were only adopted some months ago, that is, in October 2012. There is no information available to assess whether or not they are applied effectively in

[360] Ibid., Article 4 and the explanatory memorandum.
[361] Also refer to Council of Advice, RvA no. RA/10-12-LV, 6 August 2012, p.4-5.
[362] Also Speech 75th Anniversary of Parliament, Curaçao 4 April 2013, Jacob (Bob) Wit, Towards a constitutional democracy (*Naar een constitutionele democratie*).
[363] Country ordinance Integrity (candidate) ministers, Article 7. Compare with Constitution, Articles 30 and 43.
[364] Country ordinance Integrity (candidate) ministers, Article 16.
[365] Penal Code, Book 2, Title XXVIII.
[366] Penal Code, Book 3, Title VIII.
[367] Code of Criminal Procedure, Article 200.
[368] Civil Code, Book 7A, Article 1614y. Also Code of Criminal Procedure, Article 261.
[369] Country ordinance Legal and material rights and obligations of civil servants, Sections 15 and 16 and the explanatory memorandum.

practice, although questions have already been raised about some appointment and dismissal decisions of ministers.[370]

This is in large part due to the legislation itself, because it does not include many provisions to allow Parliament or the public to assess its effectiveness, and it is not clear to what extent the Court of Audit is able to do so.[371] Thus it cannot be evaluated, for example, whether the strict regulations requiring ministers to sever business ties or refrain from taking certain decisions, work in practice. This is an important loophole, because, as one expert indicated, in practice, decision-making of the Executive should be assessed in the context of what the minister, his/her political party or extended family stand to gain from it. In light of the aforementioned lack of transparency of the delegation of executive power, as well as the lack of the use of this delegated power, it cannot be ascertained whether the integrity of members of the Executive is ensured in practice. In essence, who is authorised to decide on what or to appoint whom, and who took what decision is not sufficiently transparent, creating fertile ground for breaches of integrity.

Before the introduction of the new legislation, legislation leaving considerably more discretionary power to the prime minister was in place[372] or, in case of the screening of Curaçao's prospective first cabinet, used in practice.[373] Thus, for example, business interests were not ruled out per se, and a candidate was to decide in consultation with the formateur/prime minister whether or not to sever connections with business interests or end additional functions.[374] Against that background, in practice there have been several well-publicised cases of suspected integrity breaches implicating several members of the Executive. These include accusations of misuse of power to request a 'favour' in exchange for certain tax facilities, bribes, suspected conflicts of interest related to business interests and, in some cases, violence.[375] It was also made public that several transactions of prospective ministers had been reported as 'unusual transactions' to Curaçao's financial intelligence unit, MOT.[376] Other, more recent, examples include accusations of taking government property and suspected conflicts of interest related to property leasing and property buying.[377] In some cases, charges have also been pressed against members of the Executive. So far, however, no-one has been convicted, and in some cases, the public prosecutor announced he did not see reason for further investigation.

An additional point of concern is the persistent lack of transparency of the functioning of the Safety Service Curaçao. In May 2012 a committee was appointed, in cooperation with the Dutch General Intelligence and Security Service (AIVD), to take forward the reform of the Safety Service Curaçao. In November 2012 one of the three members left the committee.[378] As yet, neither the public nor, it appears, Parliament has been informed about the status of the reorganisation.

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[370] See, for example, 'Josepha bypasses hiring rules personnel' (*Josepha omzeilt regels omtrent indienstneming personeel*), 14 May 2013, via www.kkcuracao.com [accessed 17 May 2013].
[371] Cf. country ordinance Court of Audit, Article 32.
[372] Country ordinance Integrity protection ministers (*Landsverordening Integriteitbescherming ministers*), Official Curaçao Gazette, 2010, No.87, Appendix c.
[373] Country decree of 10 February 2010, No.10/0385, regarding guidelines on who is involved in the appointment of ministers and secretaries of state (*Landsbesluit betreffende de richtlijnen die worden gehanteerd bij de benoeming van ministers en staatssecretarissen*), Country Gazette 2010, No.5. Also refer to 'Schotte asked to form cabinet' (*Schotte gevraagd voor formatie*), 18 September 2010, *Antilliaans Dagblad*.
[374] See, for example, Country decree of 10 February 2010, No. 10/0385, Article 3.
[375] See, for example, Commissie onderzoek Curaçao, 30 September 2011; prime minister's address to Parliament, 11 October 2011:37.
[376] 'MOT versus OM' (*MOT versus OM*), 11 August 2012, *Antilliaans Dagblad*. Also refer to letter of 1 August 2012 of the procurator general on 'Unusual transaction reports Prime Minister Schotte' (*MOT-meldingen minister-president Schotte*).
[377] CPA buys building from former minister Jamaloodin, 26 January 2013, via www.curacaochronicle.com [accessed 9 June 2013].
[378] 'Grüning lets go of VDC' (*Grüning laat VDC los*), 12 December 2012, *Antilliaans Dagblad*.

Role

Public sector management

Score: 25

TO WHAT EXTENT IS THE EXECUTIVE COMMITTED TO AND ENGAGED IN DEVELOPING A WELL-GOVERNED PUBLIC SECTOR?

A structural commitment to a well-developed public sector is lacking, although there are some positive developments, such as the introduction of the corporate governance advisor and several specified inquiries commissioned by the Executive.

Curaçao's governments repeatedly emphasised the importance of a well-governed public sector. Thus, for example, both in the budget for 2012 as well as in the budget for 2013, government emphasised the importance of a continuous development of the civil service, focusing on concepts of integrity, empowerment and accountability.[379] They also underscored the importance of good corporate governance of public companies and public foundations.[380]

In practice, the specific circumstances of the new constitutional relations, requiring two executive layers – one of the former Netherlands Antilles and one of the former island territory of Curaçao – to merge, provided for a challenging start for the Curaçao Executive. That it would not be easy had already been foreseen in the run-up to the new country, when the plans to form the required 'New Administrative Organisation' (*Nieuwe Bestuurlijke Organisatie*) were labelled as ambitious, perhaps 'too ambitious'.[381] In the nine ministries, almost everyone was assigned a new position, a new function, and had to work with new procedures. Approximately a quarter of all civil servants, more than 1,000 people, objected formally. It took until well into 2011 to handle all complaints, and left many with low morale and the feeling that positions in the new organisation had been assigned indiscriminately.[382]

The lack of continuity at the Executive and top administrative level did not ease the task at hand. Since October 2010, a total of six ministers have been in charge of the Ministry of Administration, Planning and Service (BPD), the ministry responsible for the effective functioning of the civil service as a whole.[383] At the same time, and in line with tradition, the administrative leadership also underwent significant changes. And although the Executive denied that appointments and dismissals were politically driven,[384] many continue to think otherwise and argued that some appointments were not necessarily in line with the required level of professionalism.[385] Similar perceptions continue to persist around appointment and dismissal procedures of board members of public companies and foundations. These were fuelled by decisions of the Executive, both in 2010 and in 2012, to try to bring about collective dismissal of acting board members. Despite the introduction of a corporate governance ordinance, a corporate governance code and a corporate governance advisor, the prevailing opinion is that the composition of board members of public

[379] See Budget 2012, Country Gazette 2012, No.3, 'Care for staff policy' (*Zorg voor het personeelsbeleid*) and Budget 2013 'Care for human resource and organisation policy' (*Zorg voor het human resource – and organisatiebeleid*).
[380] See Budget 2012 and Budget 2013, 'Corporate governance code'.
[381] Commission of experts, Assessment of government apparatus Curaçao and Sint Maarten (*Toetsing overheidsapparaten Curaçao en Sint Maarten*) (s.l.: Commission of experts, May 2010), p.40.
[382] Alex Mollen, Lots of ambition, little time. (*Zoveel ambitie, zo weinig tijd*). In: Hardy A. Huisden & Brede Kristensen (Eds), A new country Curaçao (*Een nieuw land Curacao*) (Curaçao: Carib Publishing, 2012), pp.15-33.
[383] Four ministers in the first cabinet, one in the interim and one minister since the Cabinet-Hodge.
[384] Prime minister's address to Parliament, 11 October 2011:33.
[385] Also refer to, for example, 'VBC criticises appointment policy Schotte' (*VBC hekelt benoemingenbeleid Schotte*), 14 May 2011, via www.rnw.nl [accessed 5 June 2013]. For a more recent example, 'Directors themselves responsible' (*Top SOAW zelf verantwoordelijk)*, 15 May 2013, *Antilliaans Dagblad*.

entities 'has to resemble as much as possible the new composition of the recently appointed political leadership'.[386]

In this context, many of the recently introduced legislative provisions to further develop a well-governed public sector have not yet been fully implemented in practice. Thus, for example, although every ministry is required to appoint an integrity confidant, so far none have been appointed.[387] Also, up to now, positions involving confidentiality, that is, positions for which a thorough and regular screening by the Security Service Curaçao is mandatory, have not yet been classified as such.[388] Similarly, the required public register of those authorised to conduct private legal acts, mentioned in the previous chapter, has not yet been made available.

Also, it is not always clear who is responsible for what, and who is to account to whom, and at least in several cases management agreements have not been concluded.[389] In several inquiries commissioned by the Executive, the administration's internal auditor also notes several shortcomings related to insufficient supervision of administrative bodies, and shortcomings in contracting within the public sector.[390] Other shortcomings, in turn, relate to too *much* involvement of the Executive. Thus, this assessment returned some reports of intimidation and humiliation of staff, as well as micro-management of departments or public companies. (This is further discussed in Chapter VII.4 Public Sector.)

Legal System

Score: 25

TO WHAT EXTENT DOES THE EXECUTIVE PRIORITISE PUBLIC ACCOUNTABILITY AND THE FIGHT AGAINST CORRUPTION AS A CONCERN IN THE COUNTRY?

The Executive has acted to strengthen the legislative framework to promote good governance and fight corruption, especially in the run-up to the constitutional changes. However, some legislation is still awaiting enactment, and several newly-enacted provisions have yet to be implemented.

In the run-up to the constitutional changes, the Executive has devoted considerable attention to strengthening the legal framework to increase confidence in the proper functioning of government, the importance of which was already underscored in 1999 in the report *Konfiansa*. Thus, as mentioned in the previous chapter, the Executive sent important pieces of draft legislation to Parliament for approval, including legislation to strengthen corporate governance and the integrity of the public sector. And as discussed in the above, in October 2012 the interim cabinet prioritised a new legislative proposal to protect the integrity of (candidate) ministers, already held out as a prospect by the first Curaçao government in November 2011.[391]

386 SBTNO, Advice regarding resolution to collective/massive dismissal of board members of public foundations and members of supervisory boards of public companies (*Advies inzake voornemen tot collectief/massaal ontslag bestursleden van de overheidsstichtingen en leden van de RvC van de overheidsvennootschappen (art. 10, AB 2009, no.92)*, 15 February 2013. Also Cft, Changed composition of board of directors and supervisory board public entities (*Gewijzigde samenstelling besturen en RvC overheidsentiteiten*), 12 February 2012.

387 See, for example, country ordinance Legal and material rights of civil servants, Article 85.

388 Country ordinance Safety service Curacao (*Landsverordening Veiligheidsdienst Curaçao*), Offical Curaçao Gazette, 2010, No.87, Appendix j, Article 15 and the explanatory memorandum to that article.

389 See, for example, ARC (29 March 2012), Report Parking Authority Curaçao (*Rapport Parking Authority Curaçao*). Also refer to Chapter VII.9 Supervisory Institutions (Private Sector).

390 Also see, for example, Budget 2013, Nota van Financiën, p.20 on the Road fund.

391 Letter from prime minister of Curacao to minister of BZK of 17 November 2011 regarding the report of the Commissie Onderzoek Curaçao (*Brief Prime Minister of Curaçao to Minister van BZK van 17 november 2011 over het rapport van de Commissie Onderzoek Curaçao*).

However, some important legislation is still pending. Thus, for example, although it is reported that the draft harmonisation of supervision ordinances of the financial sector is now ‘in the legislative process’, it has not yet been enacted,[392] and the same is true for anti-trust legislation.[393] Also, several legislative provisions that have been introduced have not yet been fully applied in practice, such as those incorporated in the ordinance on the financial affairs of political parties. In addition, progress in the execution of action plans, agreed upon in collaboration between the Kingdom partners prior to the constitutional changes to safeguard the proper execution of tasks of the Police Force Curaçao (*KPC – Korps Politie Curaçao*) and the prison, is slow.[394] (Also refer to Chapter VII.5 Law Enforcement).

The Executive *has* acted on the process of review and determination of necessary amendments of legislation in view of compliance with the recommendations of the Financial Action Task Force (FATF) with regard to anti-money-laundering and the combating of the financing of terrorism (AML/CFT). However, up to now, many of the recommendations have yet to be implemented and several pieces of legislation are, also, reported to be ‘in revision’ or ‘in the legislative process’.[395] So far, also, the Executive has not developed a supervisory programme to ensure compliance of the non-profit organisations with the AML/CFT legal framework.[396] (Also refer to Chapter VII.14 Supervisory Institutions Private Sector.)

[392] CFATF, 30 October 2012, First follow-up report Curaçao, p.6.
[393] ‘Competition authority to be established’ (*Mededingingsautoriteit in oprichting*), 26 March 2013 via www.versgeperst.com, [accessed 5 May 2013].
[394] See the first five reports of the Commission monitoring their progress https://zoek.officielebekendmakingen.nl/kst-33400-IV-25.html. [accessed 5 May 2013].
[395] See CFATF, 30 October 2012, First follow-up report Curaçao, for example p.4 and p.6.
[396] Also see CFATF, 30 October 2012, First follow-up report Curaçao, p.12.

VII.3 JUDICIARY

STRUCTURE AND ORGANISATION

This chapter assesses one of the two main institutions in Curaçao's judiciary, that is, the Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba (*zittende magistratuur – Gemeenschappelijk Hof van Justitie*). This chapter does not assess the Public Prosecutor's Office. To be sure, the Constitution includes both the Joint Court of Justice and the Public Prosecutor's Office as belonging to the judiciary,[397] but they are completely independent from each other. However, the Constitution also states that the procurator general, as head of the Public Prosecutor's Office, is responsible for the judicial police (*justitiële politie*) and underscores the procurator general's leading role in the detection and prosecution of punishable acts.[398] For the purposes of this assessment, this chapter therefore focuses on the Joint Court of Justice, and includes the assessment of the Public Prosecutor's Office in the pillar 'law enforcement agencies'. (See Chapter VII.5 Law Enforcement Agencies.)

The Joint Court of Justice (referred to below as the Court of Justice) is, according to the 'Trias Politica' doctrine, one of the three powers of the government of Curaçao to be divided among three separate branches: the legislative, the executive, and the judiciary branch. Under the separation of powers, each branch is independent, has a separate function, and may not usurp the functions of another branch. This is also the case with regard to the Court of Justice of Curaçao. The status and position of the Court of Justice are anchored in the Constitution.[399] The Court of Justice is responsible for the administration of justice in first instance and in appeal on the islands, and consists of a president, the other members, and their substitutes. The members of the Court of Justice deal, both in first instance and in appeal, with civil cases, criminal cases, and cases of administrative law, such as tax law.[400] The members of the Court who are dealing with cases in first instance and those who are dealing with cases in appeal are exercising their jobs completely independently from each other. The Court of Justice is a legal entity constituted and governed by public law. Its tasks and authorities are laid down in the Kingdom Act Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba.[401] The Court's executive board (*Bestuur*) has five members including the president; its operational management is supervised by a supervisory board (*Beheerraad*). The supervisory board consists of four members and functions as a liaison between the Court of Justice and the governments of the four countries.[402] The countries are represented by the four ministers of justice.

The Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba is considered to take the jurisprudence of the Supreme Court of the Netherlands (*Hoge Raad der Nederlanden*) into account.[403] The Supreme Court of the Netherlands is the court of cassation for the Caribbean parts of the Kingdom and is located in The Hague, the Netherlands.[404] As the highest court in the fields of civil, criminal and tax law, the Supreme Court is responsible for hearing appeals

[397] Constitution of Curaçao (*Staatsregeling van Curaçao*), Official Curaçao Gazette 2010, No.86, Article 105.
[398] Ibid. Article 107.
[399] Ibid, Chapter 7.
[400] See www.gemhofvanjustitie.org [accessed 17 January 2013].
[401] State Gazette Kingdom of the Netherlands, 2010, No.335 (below: Kingdom Act Joint Court of Justice).
[402] See www.gemhofvanjustitie.org [accessed 17 January 2013].
[403] Oberon Nauta, Good Governance in 'The West'. Institutional and Social Constraints of Good Governance in the Caribbean Parts of the Dutch Kingdom (*Goed bestuur in de West, Institutionele en maatschappelijke beperkingen voor goed bestuur in de Caribische rijksdelen*) (Oisterwijk: Uitgeverij BOXPress 2011, 2011) p.46.
[404] State Gazette Kingdom of the Netherlands, 2010, No.388, Kingdom Act Cassation proceedings .*(Cassatie procedures)* for Aruba, Curaçao, Sint Maarten and for Bonaire, Sint Eustatius and Saba.

in cassation. It has the power to overturn the decisions of the Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Sint Eustatius and Saba, if they do not give due consideration to procedural rules, or if their judgments are not in accordance with the applicable law.

ASSESSMENT

Capacity

Resources (law)

Score: 100

TO WHAT EXTENT ARE THERE LAWS SEEKING TO ENSURE APPROPRIATE SALARIES AND WORKING CONDITIONS OF THE JUDICIARY?

There are comprehensive laws seeking to ensure appropriate judicial salaries, working conditions and tenure policies.

The Court of Justice is responsible for its own personnel and budget management. Since the constitutional reform in 2010, the legal framework provides for the participation of the judiciary in the process of determining annual allocations of the budget.[405] The executive board of the Court of Justice sends a proposal for the annual budget before 15 February to the supervisory board, which will send a draft annual budget to the Ministers of Justice of Aruba, Curaçao, Sint Maarten and the Netherlands, before 15 March. 'The four ministers' determine the annual budget of the Court of Justice in accordance with a share ratio.[406] And hence the executive board of the Court of Justice is to indicate to the minister of finance of Curaçao what budget, including investments, is needed in the opinion of the Court.[407]

Because the Court of Justice is a legal entity, the personnel are contracted by the legal entity. As for personnel, the salaries and benefits of the members of the judiciary are regulated in the Kingdom Decree Legal Position Joint Court of Justice (*Rijksbesluit rechtspositie Gemeenschappelijk Hof van Justitie*).[408] This decree provides an overview of salary scales which are based on the different positions and levels of seniority within the judiciary.[409]

405 Kingdom Act Joint Court of Justice, 2010, No.335, Articles 55-58.
406 Ibid, Article 57.1.
407 Country ordinance Government accounts, 2010, No.87, Articles 34, 38 and 39 and the explanatory memorandum.
408 Kingdom Decree legal position The Joint Court of Justice (*Rijksbesluit rechtspositie Gemeenschappelijk Hof van Justitie*), State Gazette Kingdom of the Netherlands, 2010, No.358.
409 Ibid, Annex Article 4.2, 10.3, 12.2 and 50.2.

Resources (practice)

Score: 75

TO WHAT EXTENT DOES THE JUDICIARY HAVE ADEQUATE LEVELS OF FINANCIAL RESOURCES, STAFFING, AND INFRASTRUCTURE TO OPERATE EFFECTIVELY IN PRACTICE?

The judiciary appears to have adequate financial resources to achieve its goals in practice, but there are some concerns about the information processes of the Court and the office of the registrar. Also, attracting and keeping adequately trained personnel remains a concern.

The judiciary's overall budget is said to have been sufficient to achieve its goals. In 2011 the total contribution to the Court of Justice was NAf 31,203,000 (US$ 17,431,844), of which Curaçao contributed NAf 12,581,947 (US$ 7,029,021). The realisation of the total allocated budget was NAf 26,444,000 (US$ 14,773,184), which means a realisation of 85%. The total expenditure of the Curaçao location of the Joint Court in 2011 was NAf 15,170,665 (US$ 8,475,232).[410] Regarding the costs for personnel, the average income of the judiciary is by far the highest of the public sector in Curaçao, and exceeds that of a minister in Curaçao.

In general there is an adequate number of judges and registrars to perform the duties of the judiciary, but attracting and keeping adequately trained personnel remains a concern. The availability of local judges is limited and the willingness of judges from the Netherlands to work in Curaçao depends, among other things, on their career opportunities in the Netherlands. However, up to now, the majority of the Court's judges is from the Netherlands and appointed for a term of three to five years. With the exception of the coming and going of expats, generally speaking there is stability of human resources.

However, some respondents wonder if the judiciary tasks are always carried out in an efficient and effective way. Some of the current judges and registrars are said to be overburdened, while others appear to have time on their hands. Moreover, the office of the registrar, which is actually 'the gateway to the judiciary', does not always operate effectively in practice. There are complaints about its accessibility by phone, sometimes files get lost, administrative mistakes are made, and requests are not always answered in a timely manner. On the positive side, this matter has the attention of the executive board of the Court of Justice and improvements are steadily being made.

Although financial and human resources are sufficient and the judiciary is performing its duties, there are some concerns regarding the provision of information and the expertise of some staff members. Firstly, there are concerns about the ICT infrastructure of the judiciary office. There is a sufficient amount of computers and other hardware, but the software is still inadequate for to allow for a proper information process. Secondly, there are concerns about the level of expertise of some staff members. Permanent education to enhance the knowledge of, for instance, the Dutch language, is necessary and has the attention of the executive board of the Court of Justice. Resources to educate and train personnel are thought to be sufficient. Because local opportunities for education and training for the judiciary are limited, the Joint Court recently developed a local education programme.

[410] Joint Court of Justice, Annual report 2011, February 2012.

Independence (law)

Score: 100

TO WHAT EXTENT IS THE JUDICIARY INDEPENDENT BY LAW?

The legal framework contains important provisions to ensure formal independence of the judiciary, and the scope for amendments is limited.

The Kingdom Act of the Joint Court of Justice contains provisions designed to safeguard the independence of the judiciary. Moreover, the judiciary is anchored in the Constitution.[411] Since the constitutional and Kingdom Act provisions are so strictly formulated, and an amendment requires consensus of all countries in the Kingdom, the possibilities of amending them are limited.

The Constitution states that any interference with the work of the judiciary is prohibited.[412] Thus, for example, any interference with court proceedings is prohibited. Also, there are provisions designated to protect judges from undue influence by prohibiting prosecutors from communicating with judges during trials.[413]

The members of the Court of Justice and their substitutes are all appointed by Kingdom Decree at the proposal of the four ministers of justice of the Kingdom. If a vacancy arises, the Court of Justice is invited to put forward a non-binding joint recommendation.[414] Judges are appointed for life, that is, until the age of 70, by Royal Decree.[415] The president of the Court of Justice is appointed as president for a period of five years.[416]

Once judges have been appointed, they can only be suspended or fired on precisely specified grounds.[417] Reasons for suspending or firing a judge must be: unfit for task or loss of Dutch nationality, being held in detention, convicted for a crime, and declared bankrupt.[418] A judge can only be suspended or fired by the Supreme Court of the Netherlands[419] or resign on own request by Kingdom Decree.[420] These limited grounds for suspension or dismissal prevent other parties, such as the Executive, from influencing the judiciary by use of threat.

Also regarding the recruitment process of candidates for the judiciary, there are some safeguards. Annually the executive board of the Court of Justice recruits candidates for the 'judges and prosecutors training/education programme' (*Raio – Rechterlijke ambtenaar in opleiding*). It publishes an advertisement, after which a selection commission selects the candidates based on detailed professional criteria. There is room for participation of civil society in the selection procedure. Participants are: a lawyer, the dean of the Law Faculty, a representative from the private sector, besides the procurator general and the president of the Joint Court. The Raio education programme is a six-year programme which an individual must complete successfully in order to become a judge or public prosecutor.[421] There is no independent Judicial Services Commission or similar body with constitutional protection for the appointment and removal of judges.

The prescribed criteria for candidate judges represent a set of formal qualifications; judges shall be Dutch citizens who have a master's degree in law. The law does prescribe which positions are

[411] Constitution of Curaçao, 2010, No.86, Chapter 7.
[412] Ibid, Article 98.4.
[413] Code of conduct Public Prosecutor's Office, 2011.
[414] Kingdom Act Joint Court of Justice, 2010, No.335, Article 23.1.
[415] Ibid, Article 25.1.
[416] Ibid, Article 40.5.
[417] Ibid, Article 29-34, 37, 39.
[418] Ibid, Article 30-32.
[419] Ibid, Article 30.3, 31 and 32.
[420] Kingdom Decree, Article 30.1.
[421] Ibid, Chapter 4.

incompatible with the office of judge, that is: governor, minister, member of a High Council of State, lawyer and notary.[422] For substitute judges, a master's degree in law is not required and incompatibility rules are less strict.[423] Due to the size of the islands, it is not possible to have a permanent judge on smaller islands such as Saba and Sint Eustatius,[424] although this is not the case for Curaçao.

Independence (practice)

Score: 75

TO WHAT EXTENT DOES THE JUDICIARY OPERATE WITHOUT INTERFERENCE FROM THE GOVERNMENT OR OTHER ACTORS?

Overall, the independence of the judiciary is adequately safeguarded in practice. Although sometimes actors try to interfere or call into question its performance, this has not shown consequences for the behaviour of the judiciary.

Judges are appointed by Kingdom Decree at the proposal of the four ministers of justice for reasons of competence. As far as we could determine in this assessment, there are no examples of judges being removed or transferred due to the content of their decisions. In practice it is highly exceptional for judges to be removed before the end of their term. Interviewees stated that, if judges are discredited because of their own conduct, they usually resign. Moreover, in practice it is quite difficult to suspend or dismiss a judge. This has both advantages and disadvantages. The independence is adequately safeguarded, but when somebody is not performing adequately it is also very difficult to dismiss or remove that person.

As far as is known, the regulations protecting judges from undue influence are effectively enforced. The independence of the judges has been called into question on a few occasions, but nothing has been proven. Judges from the Netherlands are sometimes accused of being subjective and partial in favour of the Netherlands.[425] This reflects how the society is divided over the level of involvement of the Netherlands (see Chapter IV. Country Profile). Opinions differ about the advantages and disadvantages of judges from the Netherlands in Curaçao. Some respondents emphasised the importance of judges from abroad, because they do not have as many ties with the local society and are therefore better able to take a more neutral stance. Other respondents emphasised the importance of local judges, because they are familiar with the culture and the language of the country.

A recent example of questioning the independence and expertise of a judge can be illustrated by a case where the media was used as the means. According to a well-known lawyer, the examining judge didn't respect the defence of the lawyer and the existing regulations.[426] The lawyer approached the media and proposed an investigation into the integrity and actions of (a small group of) judges. According to interviewees, the complaints of this lawyer were not supported by other lawyers. The president of the Court of Justice[427] and the president of the Bar (*Deken van de Orde*

[422] Ibid, Article 26.
[423] Ibid, Article 25.3
[424] L.J.J. Rogier, Principles of Caribean Constitutional Law (*Beginselen van Caribisch Staatsrecht*), (Den Haag: Boom Juridische Uitgevers, 2012), p.187.
[425] See 'Asjes: Judge controlled by The Hague ' (*Asjes: Rechter aangestuurd door Den Haag*), 24 January 2012, via www.versgeperst.com [accessed 7 February 2013].
[426] Lawyer demands investigation Court of Justice, 21 March 2012, via www.dutchcaribbeanlegalportal.com [accessed 27 February 2013].
[427] 'Joint Court: Statements objectionable '(*Hof: uitlatingen laakbaar)*, 22 March 2012, via www.antilliaansdagblad.com, [accessed 26 February 2013].

van Advocaten)[428] both published a reply in the newspaper and suggested that the lawyer follow the formal procedure if he had any complaints.

Governance

Transparency (law)

Score: 75

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC CAN OBTAIN RELEVANT INFORMATION ON THE ACTIVITIES AND DECISION-MAKING PROCESSES OF THE JUDICIARY?

While a number of laws and provisions exist to allow the public to obtain relevant information about the organisation and functioning of the judiciary, a few aspects related to the transparency of the judiciary are not covered.

The legal framework contains a number of requirements designed to ensure transparency of court proceedings. The Constitution states that court sessions are to be open to the public, except for a few statutory exceptions, for example, in family cases or when young children are involved. The verdicts should be stated in public. Journalists can attend all court proceedings and may report on these in writing, with some exceptions, including family and juvenile cases.[429]

Moreover, the executive board of the Court of Justice is required to publish its management rules (*bestuursreglement*) in the Official Curaçao Gazette to inform the public about some important aspects of its working methods, decision-making processes, organisational structure, and the division of tasks and replacement of its members in case of illness or other reasons of absence.[430] The Kingdom Act does not prescribe a time limit to publish these management rules.

In addition, the executive board of the Court of Justice is required to deliver its annual report before 1 April. To whom the report has to be sent is not stipulated. The report is to include a description of the Court's activities over the last year and its audited annual accounts.[431] The Court of Justice is not obliged to make its annual reports available to the general public.

The legal framework does not contain any provisions to inform the public proactively about some important aspects of the judiciary's activities such as judicial statistics, appointments and dismissals.

[428] Curacao Bar Association (*Orde van Advocaten*) *Reactie van de Deken van de Orde van Advocaten Curaçao, mr Karel Frielink, op de publiekelijk door mr Eldon "Peppie" Sulvaran geuite beschuldigingen*, 22 March 2012, via www.ordevanadvocaten.an [accessed 26 February 2013].
[429] Kingdom Act, The Joint Court of Justice, 2010, No.335, Article 5.
[430] Ibid, Article 44.
[431] Ibid, Article 48.

Transparency (practice)

Score: 75

TO WHAT EXTENT DOES THE PUBLIC HAVE ACCESS TO JUDICIAL INFORMATION AND ACTIVITIES IN PRACTICE?

Overall, the public is able readily to obtain relevant information on the organisation and functioning of the judiciary, on decisions that concern them and how these decisions are made. The management rules are not made public yet.

Interviewees stated that access to court sessions is ensured in practice and that there is usually enough space to accommodate the media and others interested. Besides the opportunity to attend court sessions, the public has access to the website of the Court of Justice, launched in 2010. The website contains a broad range of information on, for example, the Court's structure, information about the courts in the different islands of the Kingdom, publications and news. It also refers to a Dutch website where a selected number of verdicts of the Court of Justice can be found.[432] The selection criteria refer to societal importance, a new line of jurisprudence, and its importance to interest groups and media.

The annual report and accounts of the Court of Justice of 2011 was ready in a timely manner (before 1 April 2012). Although there are no legal provisions that require this, the annual reports of the Court of Justice can be found on its website.[433] The reports contain information on operational management, statistics on reports, type of cases, verdicts and finances.

According to an interviewed expert, the management rules (*bestuursreglement)* are ready, but not yet published. The Court of Justice is currently in the process of publishing.[434]

Although it is not required, the judiciary usually does make public through different media information on judicial appointments, dismissals and transfers. Several speeches held by the president of the Bar (*Deken van de Orde van Advocaten*) regarding the investiture of judges are also published on the internet.[435]

Accountability (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE JUDICIARY HAS TO REPORT AND BE ANSWERABLE FOR ITS ACTIONS?

Judges are required by law to give reasons for their decisions. The legal framework contains extensive provisions regarding complaints and disciplinary sanctions, but there is no independent body to investigate and there is no protection for complainants.

The law requires judges to give reasons for their decisions. A verdict in a criminal case has to coincide with the reasons for the decisions, and also requires that the applied articles are mentioned.[436] The Court supervises a proper prosecution of criminal offences,[437] and the executive

[432] http://rechtspraak.nl.
[433] www.gemhofvanjustitie.org, see publication section [accessed 16 February 2013].
[434] Information received from the Court of Justice, 10 May 2013.
[435] www.ordevanadvocaten.an, see publication section [accessed 16 February 2013].
[436] Constitution of Curaçao, 2010, No.86, Chapter 7 Article 104.2.
[437] Kingdom Act Joint Court of Justice, 2010, No.335, Article 19.

board of the Court is to advance the legal quality and a uniform application of the law within the Court of Appeal and the Court of First Instance.[438]

The law requires the judiciary to have a formal complaints and disciplinary procedure, and describes the required procedure in detail, stipulating form and timeline for answering. Complaints about judges are dealt with by the executive board of the Court. There is no independent body investigating complaints against judges, although the board is authorised to install an advisory body of three people, one of which may not be a judge. The law does not provide for specific measures to protect the complainants. Annually, information about the number and type of complaints must be published. There are no specific requirements as to how this information is to be published.[439]

Judges are not immune to prosecution for corruption[440] and other criminal offences.

Accountability (practice)

Score: 50

TO WHAT EXTENT DO MEMBERS OF THE JUDICIARY HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS IN PRACTICE?

While members of the judiciary have to report and be answerable for their actions, the existing provisions are not always applied effectively in practice.

On the positive side, judges do give reasons for their decisions in practice. In case this does not happen and the decisions of the judges are poor and not well sustained, there is, in most cases, the opportunity to appeal the case at the Court of Justice and after that to go for cassation to the Supreme Court in the Netherlands. But in practice this does not happen in most cases. The Supreme Court has the power to overturn the decision of the Court of Justice, if it does not give due consideration to procedural rules or if its judgments are not in accordance with the applicable law. Whether a case reaches the Supreme Court also depends on the ability of the client to pay for the costly legal proceedings. In 2011, of the 24 cases of the Court of Justice which were sent to the Supreme Court, two verdicts had to be withdrawn.[441]

As noted above, complaints can be submitted to the Court of Justice. At the time of writing, the Court of Justice is working on a complaints procedure, but the required official procedure does not exist yet. The number and type of complaints has also not yet been published. However, several complainants do find their way to the Court of Justice, as the Court receives about 10 complaints a year. Complaints are of various kinds: somebody feels mistreated or does not agree with the verdict, or is of the opinion that the procedure took too long, etc. As far as could be determined in this assessment, up to now, no sanctions have been imposed on judges. To date, no complaints advisory bodies have been installed.

Interviewees are not sure if the security of complainants is always guaranteed in Curaçao at present. The interviewed experts didn't mention concrete examples of intimidation and violence, but argued in general that (verbal) attacks and threats have recently increased in Curaçao.

[438] Ibid, Article 4.2.
[439] Kingdom Decree, Legal position Joint Court of Justice, 2010, No.358 Chapter 6.
[440] Penal code, Book 2, Article 130 (active bribery of judges) and 352 (passive bribery of judges).
[441] Joint Court: Statements objectionable '(*Hof: uitlatingen laakbaar)*, 22 March 2012, via www.antilliaansdagblad.com [accessed 26 February 2013].

Integrity (law)

Score: 75

TO WHAT EXTENT ARE THERE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF MEMBERS OF THE JUDICIARY?

There is extensive regulation to ensure the integrity of the members of the judiciary. Examples are a code of conduct, rules regarding additional functions and rules on gifts. There are, however, no rules on post-employment restrictions.

The Kingdom Acts state the incompatibilities for judges. They cannot take a position such as a lawyer or notary, and are not allowed to provide any legal advice outside their job.[442] The executive board of the Court of Justice is required to keep a register of additional functions and activities of judges. This register has to be made available for perusal at the Court of Appeal and the Court of First Instance.[443] There is, however, no obligation for judges to disclose financial or business interests.

The law requires the Court of Justice to have a code of conduct. This code requires providing rules for behaviour regarding financial assets, gifts, confidential information, compensation and honoraria, and public expenses.[444]

Employees of the judiciary are required to take an oath or pledge when they are appointed. There is a rule in the oath and pledge which governs gifts, hospitality and confidential information.

There are no rules requiring judges to disclose assets. The law does not stipulate which specific types of behaviour are prohibited. There are no restrictions for judges entering the private or public sector after leaving office.

Integrity (practice)

Score: 75

TO WHAT EXTENT IS THE INTEGRITY OF MEMBERS OF THE JUDICIARY ENSURED IN PRACTICE?

The judiciary does undertake some activities to ensure its integrity, but, in the absence of a code of conduct for the Court of Justice, no comprehensive approach exists. Nevertheless, the integrity of members of the judiciary appears to be sufficiently safeguarded in practice.

From the various interviews it has become clear that the Curaçao judiciary considers itself to act with integrity. Experts from outside the judiciary have the impression that overall, judges are highly professional, very thoughtful/careful, and ethically aware.[445]

On the positive side, the additional functions and activities of judges are published on the website of the Court of Justice.[446] Actually in practice, the combination of functions of substitute judges is more often experienced as a concern, because substitute judges usually have a paid job elsewhere.[447] On

[442] Kingdom Act The Joint Court of Justice, 2010, No.335, Article 26.1.
[443] Ibid, Article 26.4.
[444] Kingdom Decree legal position Joint Court of Justice, 2010. No.358, Article 3.
[445] See also: Commission of experts, Assessment of government apparatus Curaçao and Sint Maarten (s.l.: Commission of experts, May 2010, p.18).
[446] Version September 2011. www.gemhofvanjustitie.org/nevenactiviteiten [accessed 14 February 2013]
[447] Rogier, 2012:187.

the negative side, the absence of a published code of conduct for the Court of Justice is seen as an omission. Fortunately, according to the interviewed expert, the code is already approved and in the process of being published.[448]

Those to be employed at the judiciary are required to take an oath/pledge and to be sworn in, which in practice is the case.[449]

Role

Executive oversight

Score: 50

TO WHAT EXTENT DOES THE JUDICIARY PROVIDE EFFECTIVE OVERSIGHT OF THE EXECUTIVE?

The judiciary has considerable legal powers to oversee the activities of the executive. However the effectiveness of its actions is limited.

The primacy for reviewing actions of government lies with the legislature. The legal framework provides the judiciary adequate powers in terms of executive oversight. The administrative court has jurisdiction to review actions and decisions of state authorities. In 2011, the administrative court had under its consideration 1,131 administrative cases, nine per cent fewer than in 2010.[450] According to the several interviewees who participated in this assessment, administrative law procedures can take a considerable amount of time. (Refer to Chapter VII.4 Public Sector and Chapter VII.13 Business.)

As noted in Chapter VII.2 Executive, ministers may be held accountable in legal proceedings, although they do – similar to members of Parliament – enjoy certain immunity within the chamber of Parliament (refer to Chapter VII.1 Legislature). Ministers can be accountable in administrative law procedures[451] and can also be held personally liable in criminal and civil proceedings; for example they can be prosecuted for abuses of office.

However, even when the Court produces decisions against the government, enforcement of those decisions can be problematic. For example, the government tried to suspend the head of the Intelligence Service (*Veiligheidsdienst Curaçao)* and was taken to Court for it several times. The Court ruled repeatedly in favour of the Service's head, and government repeatedly presented additional reasons for his dismissal. In practice, the head of the Intelligence Service is still not allowed to enter his office.[452]

Another example of the lack of enforcement of decisions concerns 150 administrative cases (concerning working and residence permits of immigrants) in which the decisions of the Court were not enforced by the minister of justice. In May 2012, the president of the Bar wrote a letter to the minister of justice to ask for attention to be given to the lack of enforcement of the decisions of the

[448] Information received from the Court of Justice, 10 May 2013.
[449] Information received from the Court of Justice, 10 May 2013.
[450] Joint Court of Justice, Annual report 2011, p.20.
[451] See Country ordinance Administrative law.
[452] 'Lawyer Gums; Government does not accept verdicts (*Advocaat Gums: Regering respecteert vonissen niet*), 8 September 2011, via www.rnw.nl/caribiana/ [accessed 13 May 2013].

Court.[453] We didn't determine in this assessment whether these complaints have legal grounds. The Ombudsman is currently conducting an investigation.

Furthermore, for many years the environmental organisation *Stichting Milieu Organisatie Curaçao* (SMOC) has been trying to limit the pollution caused by an oil refinery in Curaçao. The organisation initiated and carried out various court proceedings to achieve this. Despite several court decisions in SMOC's favour, the government refuses to enforce the Nuisance Licence (*hinderwetvergunning*) which was granted in 1997 to the refinery.[454] (Also refer to Chapter VII.12 Civil Society.)

Corruption prosecution

Score: 50

TO WHAT EXTENT IS THE JUDICIARY COMMITTED TO FIGHTING CORRUPTION THROUGH PROSECUTION AND OTHER ACTIVITIES?

Due to its mission to be independent, the judiciary cannot be proactive, but has to be reactive in its contribution to the fight against corruption. It is difficult to assess to what extent the judiciary is successful in penalising offenders in corruption-related cases, due to a lack of information.

There are no regular and comprehensive court statistics on criminal corruption cases, and the annual reports of the Court of Justice[455] do not provide an insight into the number of corruption convictions. Those interviewed in this assessment considered the total number of corruption cases and convictions to be low. Preliminary findings of an academic study show about 10 corruption cases in appeal between 2008 and 2011 in Curaçao.[456] In those cases the judiciary was successful in penalising the offenders.

There is no evidence that this small number is due to reluctance on the part of the judiciary. While the judiciary has the authority to penalise offenders in corruption-related cases, it is dependent on the public prosecutor to bring a case to court. The judiciary depends largely on the prosecutions instigated by the law enforcement agencies. In addition, the Public Prosecutor's Office and the Court of Justice do not always have specialists who have the corruption expertise necessary to investigate and to proceed. (Also refer to Chapter IV. Corruption Profile and Chapter VII.5 Law Enforcement Agencies). Moreover, in general, corruption-related investigations take a long time.

Judicial authorities cooperate and offer mutual legal assistance to requesting foreign judicial authorities in case of corruption-related crimes with a cross-border element, although the efficiency and effectiveness could improve, according to interviewees.

The judiciary is, due to its mission, not proactive in suggesting anti-corruption reforms. According to an expert of the judiciary, this would subvert the independence and impartiality of the judiciary.

[453] Curacao Bar Association, Letter to the Minister of Justice regarding applications for residents permits (*Aanvragen vergunningen tot tijdelijk verblijf*), 23 May 2012, via www.ordevanadvocaten.an [accessed 27 February 2013].
[454] Judge: This nuisance must stop, 28 May 2009, via www.vrcurassow.com, see also www.stichtingsmoc.com.
[455] Joint Court of Justice, Annual report 2011.
[456] P.C.M. Schotborgh-van de Ven, VU University Amsterdam, PhD study in progress, The causes of fraud and corruption in the Dutch Caribbean.

Although the executive can ask the judiciary to give advice,[457] the judiciary of Curaçao has to maintain a reserved attitude to guarantee its independence and impartiality.

[457] Kingdom Act, Joint Court of Justice, 2010, No.335, Article 47.

VII.4 PUBLIC SECTOR

STRUCTURE AND ORGANISATION

The public sector delivers goods and services by and for the government, and public sector employees assist the Executive in formulating policies, carrying out decisions, administering public services and exercising control over compliance with laws and regulations.

In a narrow sense, Curaçao's public sector consists of ministries, each led by a minister.[458] Currently, there are nine ministries.[459] The specific organisation is laid down by country ordinance,[460] and may be further detailed in country decrees. Each ministry is headed by a secretary general who is charged with its operational management and is to coordinate the preparation of policies and the execution of policies. He executes his tasks based on an agreement with the minister responsible for the ministry.[461] Ministries may cover a policy department, a support staff and one or more public service agencies, such as agencies responsible for the issuing of permits.[462] Moreover, several supporting activities related to finances, administration, personnel and documentation are centralised and under the responsibility of one minister, the minister of administration, planning and service (*bestuur, planning en dienstverlening)*.[463] A more extended definition of the public sector also includes public companies, public foundations and other public entities, on which government can exercise its influence through shareholdership, statutory relations or subsidy requirements.

The assessment of the public sector in this chapter focuses on the ministries and the services which fall directly under their responsibility. It also contains some observations relevant to public companies and public foundations, and these observations are also considered in the quantitative assessment of this pillar, the scoring. This chapter does not include the public institutions that are covered in other chapters as separate pillars, such as the legislature, the Executive and the law enforcement agencies. It also does not include an assessment of those sectors of the economy which are partly or fully subsidised with public funds, such as the education and health care sectors.

[458] Constitution of Curaçao (*Staatsregeling van Curaçao*), Official Curaçao Gazette 2010, No. 86, Article 32.
[459] These are: the Ministry of General Affairs, the Ministry of Administration, Planning and Service, the Ministry of Justice, the Ministry of Finance, the Ministry of Education, Science, Culture and Sport, the Ministry of Health, Environment and Nature, the Ministry of Social Development, Labour and Welfare, the Ministry of Economic Development and the Ministry of Traffic, Transport and Planning.
[460] Country ordinance Organisation public administration (*Landsverordening Ambtelijk bestuurlijke organisatie*), Official Curaçao Gazette 2010, No.87, Appendix k.
[461] Ibid., Article 2.
[462] Ibid.
[463] Ibid., Article 19.

ASSESSMENT

Capacity

Resources (practice)

Score: 50

TO WHAT EXTENT DOES THE PUBLIC SECTOR HAVE ADEQUATE RESOURCES TO EFFECTIVELY CARRY OUT ITS DUTIES?

The amount of financial resources available to the public administration is considered to be sufficient to carry out its regular duties, but does not leave much to spare. Attracting qualified personnel for top-level positions is not easy, and the hard and soft infrastructure of the new country is not yet sufficiently in place.

As mentioned in the chapter on the Executive, as part of the programme to structurally improve its public finances, the Executive is attempting to curb its costs. Specifically with respect to the public sector, the Executive has commissioned its internal auditor, SOAB, to investigate together with the Ministry of Finance the scope for a smaller, more effective government by curbing overhead costs, such as those arising from overwork. SOAB has also been asked to look into the scope for cutting down on material costs.[464]

So far, there are no indications that these efforts negatively impact the ability of the public sector to effectively carry out its regular duties. Experts from within the public sector indicate that the funds available are, broadly speaking, sufficient to achieve the public sector's regular duties in as far as those can be labelled as a 'going concern'. However, budgets are not considered to be generous. They are also not considered to be sufficient to take on many additional, larger projects, such as those related to the creation of a legislative database, communications or adequate work environments. Whereas such projects may have been taken up using subsidies from SONA, previously known as the Netherlands Antilles Development Foundation and in large part financed by the Dutch government, adequate funding now requires prioritisation within the government's own budget.

As for personnel expenses, there is an upper limit on the total number of full-time equivalents (FTEs) that a given ministry may utilise each year, specified by country ordinance. For all ministries combined, the total is now capped at 4,045 FTEs. However, in case a ministry reaches its maximum, temporary staff may be hired to a specified maximum and for a limited time only.[465] Moreover, at the time of writing there is a freeze on vacancies, in force since July 2012 and only allowing for exceptions for so-called 'critical functions'. In practice, the freeze on vacancies is more or less complied with, and in this assessment not reported to be a pressing problem. Also, salaries are considered to be appropriate, at least for lower- and middle-ranking civil servants. Moreover, other labour conditions, such as holidays and dismissal protection, are generally considered to be better than those of the private sector.

However, experts did consistently report problems attracting sufficiently qualified personnel for top-level positions and some specialised functions, and salaries for those positions are reported to be too low compared to those of the private sector. Another point of concern is related to the reorganisation resulting from the new country status. As mentioned earlier in the assessment of the Executive, approximately a quarter of all civil servants objected to their newly-assigned position, and

[464] Curaçao Budget 2013, Country Gazette 2013, No.10, Letter of Finance (*Nota van Financiën*), p.61.
[465] Country ordinance Organisation public administration, Article 14. Also refer to Articles 15 , 16 and 19.

many were reported to be demotivated.[466] Moreover, not all regulations, standards, procedures and internal systems of the former country and the island territory were smoothly adapted to be effectively incorporated in the new country. As a result, people assigned to new positions were not always aware of what was to be expected of them. Importantly, according to experts interviewed, this is still relevant today; many within the administration still are not aware what is to be expected of them, and many still are demotivated.[467] Also, those who *do* know what to do may not always be able to effectively carry out their duties, because they depend on others who do not yet know or, for whatever reason, are not yet able to fulfill their tasks. And although – or, according to some, because – many are working on regulations, standards, procedures and internal systems, so far, the hard and soft infrastructure necessary to run the new country is not sufficiently in place.[468]

Independence (law)

Score: 50

TO WHAT EXTENT IS THE INDEPENDENCE OF THE PUBLIC SECTOR SAFEGUARDED BY LAW?

There are several provisions aiming to ensure the independence of the administration, but the existing rules do allow for discretionary power for the Executive which may result in undue interference. There is a corporate governance framework in place to safeguard the independence of public companies and public foundations.

The Constitution stipulates that 'all Dutch nationals shall be equally eligible for appointment to public service', and aims to ensure that there is no discrimination in appointment procedures to the public service. This does not imply that it is not permitted to make demands on expertise and professional experience, but it does require those demands to be relevant and objectively established.[469] In addition, although regular evaluation is not mandatory, the law does include some provisions related to personnel evaluation.[470] There is also some protection against arbitrary dismissal, because civil servants are not only appointed by country decree, but also dismissed by such a decree. Dismissals and other work-related decisions and acts can be challenged in court.[471] Furthermore, civil servants are allowed to be a member of a political party or a union, but they are not allowed to make public any thoughts or feelings which conflict with the proper fulfilment of their duties.[472] More generally, the introduction of the new administrative organisation introduced the secretary general as an intermediary between the political management and the administration to, among other things, safeguard the professional independence of the public sector.

On the negative side, however, there are no provisions expressly prohibiting partisan interference in the appointment and promotion of civil servants. Although personnel matters are under the care of the management team of a department, that is, the secretary general, sector directors and the policy director,[473] appointments are, as mentioned, to be formalised by country decree. Positions above a

[466] See, for example, Alex Mollen, 'Lots of ambition, little time' (*Zoveel ambitie, zo weinig tijd*). In: Hardy A. Huisden & Brede Kristensen (red), A new country Curaçao (*Een nieuw land Curacao*) (Curaçao: Carib Publishing, 2012), p. 27; Also, Huisden & Kristensen 2012: 100.
[467] Cf. also 'Final conclusions' (*Eindconclusies*) . In: Huisden & Kristensen 2012: 101.
[468] See, for example, Myron Eustatius, 'Great cry and little wool. Organisational change in a political context' (*Hopi skuma, tiki chukulati. Organisatieverandering in een politieke context*). In Huisden & Kristensen 2012: 51.
[469] Constitution, Article 5 and the explanatory memorandum to that article.
[470] Country ordinance Legal and material rights and obligations of civil servants (*Landsverordening materieel ambtenarenrecht*), Official Curaçao Gazette 2010, No.87, Appendix v, Article 15.
[471] Country ordinance Regulation civil servants law 1951 (*Regeling ambtenarenrechtspraak* 1951), first published in Country Gazette 1952, No. 177.
[472] Country ordinance Legal and material rights and obligations of civil servants, Article 78.
[473] Country ordinance Organisation public administration, Article 5.

certain rank are to be decided upon by the Council of Ministers,[474] while others are required to be discussed within the Council.[475] According to one expert interviewed, the current regulations thus leave at least 'some room' for political interference with appointments. And although the law does include several specific and concrete grounds for (non-voluntary) dismissal, some provisions – such as 'incompetence or ineptitude for the position' – also do allow for more arbitrary decisions.[476] Other rules related to sensitive issues such as public procurement, the management of state property and the issuing of permits, similarly allow for discretionary room for the Executive.[477] For example, although open bidding is to be the rule for public procurement above certain specified estimated contract sums, the regulations allow for deviation from this principle. Thus, the Executive may decide that the projects 'by their very nature' are not to be considered for open bidding,[478] and rules for closed bidding below the estimated contract sums require the Executive to 'as much as possible' choose between at least three offers.[479] (Also see below under Role.)

Other than the court, there is no institution dedicated to protect civil servants employees against arbitrary dismissals or political interference. Such an institution does exist for board members of public companies and public foundations, the corporate governance advisor SBTNO, albeit that SBTNO may only advise and does not have supervisory or sanctioning powers.[480] SBTNO advises government on the application of the corporate governance provisions related to appointment and dismissal procedures of board members, including profiles functions, as well as on issues related to dividend policies and the buying and selling of bonds.[481] With the introduction of the corporate governance code in 2010, the required governance structure of public companies and public foundations now also provides specific safeguards for their independence. This includes provisions to prevent conflicts of interests, and to ensure the required levels of expertise and specification of the respective responsibilities of directors, supervisory boards and, where relevant, shareholders.[482] After some thorough discussions about the proper division of authorities,[483] and notwithstanding the fact that there is always room for improvement,[484] according to most experts interviewed the current model charter is an important step towards good governance of public entities. (Also see under Integrity, below.)

[474] Country decree of 7 February 2012, no.12/1396, regarding the publication in the Country Gazette of the Regulations of the Council of Ministers (*Landsbesluit houdende de bekendmaking in het Publicatieblad van het reglement van orde voor de raad van ministers)*, Country Gazette 2012, No.14, Article 4.
[475] Ibid., Article 5.
[476] Country ordinance Legal and material rights and obligations of civil servants, Article 103. Also Articles 5 and 94.
[477] Also Oberon Nauta, Good Governance in 'The West'. Institutional and Social Constraints of Good Governance in the Caribbean Parts of the Dutch Kingdom (*Goed bestuur in de West, Institutionele en maatschappelijke beperkingen voor goed bestuur in de Caribische rijksdelen*) (Oisterwijk: Uitgeverij BOXPress 2011, 2011), p.198.
[478] Island ordinance Financial management Curaçao (*Eilandsverordening Financieel beheer Curaçao*), Official Curaçao Gazette 1953, No.6 as later adapted, Article 12. See the section on Public procurement on the legal status of this ordinance.
[479] Ibid.
[480] Island ordinance Corporate governance (*Eilandsverordening Corporate governance*), Official Curaçao Gazette 2009, No.92, Article 4.
[481] Ibid.
[482] Island decree Code corporate governance Curaçao (*Eilandsbesluit Code corporate governance Curaçao*), Official Curaçao Gazette, 2009, No.96.
[483] See, for example, Commissie onderzoek Curaçao, Do it yourselves (*Doe het zelf*) (S.l.: Commissie onderzoek Curaçao: 30 September 2011), pp.33-34.
[484] See for some suggestions, for example, K. Frielink, 'Looking back at the future: future developments in corporate governance in Curaçao' (*Terugblik op de toekomst: de verdere ontwikkeling van corporate governance in Curaçao*), Lecture on seminar Checks and balances in corporate governance on Curaçao, 21 January 2013.

Independence (practice)

Score: 25

TO WHAT EXTENT IS THE PUBLIC SECTOR FREE FROM EXTERNAL INTERFERENCE IN ITS ACTIVITIES?

In practice, the independence of the administration is compromised by undue interference from the Executive, although the degree to which this is the case is likely to differ between ministries. The letter and spirit of the corporate governance code are not yet fully observed in practice.

In practice, several administrative procedures govern appointments and dismissals of civil servants. Thus, for example, appointment decisions are prepared in selection committees, which are also required to formally report on the procedures followed. Also, for most functions within the civil service, function profiles exist.[485]

However, although heads of departments often recommend candidates for appointments, in practice both the human resource department as well as ministers may sometimes decide differently. Ultimately, as one expert indicated, 'all depends on the required signature on the country decree'. Ministers decide differently in particular when appointments to top management positions are at issue, and there are no provisions to prevent ministers from appointing someone not selected through the regular appointment procedures.[486] Thus, for example, recently a minister was reported to have ignored recommendations of his administrative staff, instead appointing candidates of his own choosing.[487] Earlier, the selection of candidates for the top management positions in the new administrative organisation of the country did not escape political interference. Prior to the elections of 2010, the then ruling coalition hired a professional recruiter to select candidates. However, the new government in place at the start of the new country in October 2010 considered the recommendations too partisan. It selected another professional recruiter to complete the appointment process, and appointed a number of transition managers for an interim period of six months. When the new selection process was completed, most of the originally-selected candidates were not appointed.[488]

Dismissals are also not free of political interference, and many in the civil service are afraid to 'tread upon the Executive's corns'.[489] Procedures in place to prevent political influence have to be enforced in court, but, as several experts noted, this requires a significant financial investment and carries the risk of reputational damage through naming and shaming. Nevertheless, some do go to court and some win, as was, for example, the case for some of those dismissed during the first Curaçao cabinet that took office in October 2010. However, whether or not they are then also able to be reinstated is another matter. When questioned in Parliament about those who won their case in court, ministers of a later cabinet indicated they would review all cases individually,[490] but so far this obligation has not been met.

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[485] Also refer to, for example, Prime Minister Schotte address to Parliament, One year later. Politics and rule of law in Curaçao (*Een jaar later. Politiek en rechtstaat in Curaçao*), 11 October 2011, p.33.
[486] Also refer to a somewhat older report, ARNA, Report on the findings of the investigation Appointment and salary payments personnel of the Island Territory Curaçao (*Rapport bevattende de uitkomsten van het onderzoek Indienstneming en salarisbetaling personeel van het eilandgebied Curaçao*) (Curaçao: Algemene Rekenkamer Nederlandse Antillen, 21 June 2007). Cf. KLPD, Crime analysis of Curaçao 2008 (*Criminaliteitsbeeldanalyse van Curaçao 2008*) (Zoetermeer: Korps Landelijke Politiediensten, Dienst IPOL, 2009), p.140 and p.205.
[487] 'Josepha in het nauw' (*Josepha in het nauw*), *Antilliaans Dagblad*, 14 May 2013. Also: 'Top SOAW responsible' (*Top SOAW zelf verantwoordelijk*), *Antilliaans Dagblad*, 16 May 2014.
[488] Mollen 2012: 24-26. Cf. also prime minister's address to Parliament, 11 October 2011, p.33.
[489] Eustatius 2012: 49.
[490] 'To consider all cases individually' (*Alle gevallen apart bekijken*), 9 February 2013 via www.kkcuracao.com [accessed 6 June 2013].

The hands-on approach extends beyond appointment and dismissal procedures, as was, for example, illustrated by the Court of Audit (*ARC – Algemene Rekenkamer Curaçao*) in a report published in 2010. In this report, the Court reported on the course of events around the issuing of leasehold land in 2007 to people not, or only recently placed, on the relevant waiting list. The administrative head of the unit responsible was bypassed completely and judicial advice not always followed, and the Court of Audit concluded that the Executive had seriously violated the principle of good governance.[491] More recently, the Executive is considered to continue to directly interfere with administrative matters, with ministers signing where the administration is supposed to, and a sometimes 'intimidating control' from above.[492] Interference may well also take the passive form of non-decision making, regardless of administrative preparations, for example non-enforcement of building regulations and non-enforcement in general, or a lack of action on citizens' petitions.[493] However, statistics are not available and perceptions as to the frequency of undue influence differ. Some experts interviewed in the course of this assessment argue that, yes, 'it sometimes happens' and stress that it differs between ministries, while others perceive a more persistent influence.

As for public entities, as already referred to in the chapter on the Executive, the introduction of the corporate governance advisor has significantly increased transparency in the appointment and dismissal procedures. The advisor has also issued some advice related to dividend policies. However, although the Executive often follows the advisor's advice, it does not always do so, and in some cases those involved have taken their case to court. The Executive has also yet to adopt specific function profiles.[494] Moreover, despite the introduction of a corporate governance code and a corporate governance advisor, the Executive's prevailing opinion is still that the composition of board members of public entities should 'resemble as much as possible the new composition of the recently-appointed political leadership'.[495] In some cases, short communication lines between political parties and candidates put forward by those political parties feed suggestions of a lack of independence in practice. (Also refer to Chapter VII.10 Political Parties.) In addition, members of supervisory boards and the Executive does sometimes stretch its authority to the limit, and, according to some, beyond. Thus, for example, for six months in 2011 the board of directors of one public company, Integrated Utility Holding NV (Aqualectra), was required to have all expenses and financial commitments above NAf 50 (US$ 28) approved in writing beforehand by the supervisory board. In subsequent court proceedings involving the company, the phrase 'mismanagement' (*wanbeleid*) was used to either describe the actions of members of the board of directors,[496] presumably necessitating the measure, or the actions of members of the supervisory board, presumably for unduly interfering with the activities of the board of directors.[497]

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[491] ARC, Report 078/10/CUR, 23 December 2010, regarding Definite report on the investigation into the regularity and efficiency of the 1st issuing of leasehold land to waiting list candidates (*Definitief deelrapport betreffende het onderzoek naar de recht- en doelmatigheid van de 1ste uitgifte van erfpachtgrond aan wachtlijstkandidaten ten behoeve van de eigen woningbouw)*, p.18.
[492] See, for example, Brede Kristensen, 'Critical success factor of the Curaçao transition process' (*Kritische succesfactoren van het Curaçaose transitieproces*). In: Huisden & Kristensen 2012: 97.
[493] See also KLPD, 2009: 141.
[494]See, for example SBTNO, Advice regarding resolution appointment members RvC of CPA (*Advies inzake voornemen benoeming leden RvC van CPA (art. 9, AB 2009, no.92)*), 14 May 2013.
[495] SBTNO, Advice regarding resolution to collective/massive dismissal board members of public foundations and members of supervisory boards of public companies (*Advies inzake voornemen tot collectief/massaal ontslag bestursleden van de overheidsstichtingen en leden van de RvC van de overheidsvennootschappen (art. 10, AB 2009, no. 92*)), 15 February 2013. Also Cft, Changed composition board of directors and supervisory board public entities (*Gewijzigde samenstelling besturen en RvC overheidsentiteiten*), 12 February 2012.
[496] As referred to in the Judgment of 20 January 2012, Court of First Instance Curacao, LJN BV2223.
[497] Trial brief of the procurator general of the Public Prosecutor's Office, 5 June 2013, concerning the request to the Joint Court of Justice to order a civil inquiry into the policies and course of events of the public companies Aqualecta, Curoil/Curgas and Refinería di Kòrsou (RdK), via the Facebook page of the Public Prosecutor's Office [accessed 12 June 2013]. Compare Trial brief concerning Integrated Utility Holding N.V. vs the Public Prosecutor's Office, Mr. K. Frielink, Case number EJ 60654/13, 5 June 2013 (*Pleitnotitie Mr. K. Frielink*), point 10, via www.dutchcaribbeanlegalportal.com [accessed 12 June 2013].

Governance

Transparency (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE TRANSPARENCY IN FINANCIAL, HUMAN RESOURCE AND INFORMATION MANAGEMENT OF THE PUBLIC SECTOR?

There are several provisions in place to ensure transparency in management of the administration, but transparency provisions related to administrative decisions and public procurement are not in place. There are no provisions available to ensure that public companies and foundations make their annual reports and annual accounts public.

As mentioned in the assessment of the Executive, there are several provisions to ensure transparency of the financial management of public sector, and all draft budgets, draft budget amendments and draft annual accounts are to be published 'immediately' after their submission to Parliament.[498] Government is also required to publish its personnel decisions as well as an overview of Curaçao's finances on a monthly basis.[499] Moreover, there is a legislative framework in place related to the management and archiving of administrative documents. Government information is in principle required to be archived after 20 years and made public thereafter, except for some data to protect privacy and security, which is only to be made public after 70 years. Not all documents are to be kept, and documents related to individual decisions such as those related to the issuing of permits, special dispensations and some documents related to public procurement, may be destroyed after a specified period of time. Contracts and decisions related to public procurement are to be kept.[500]

However, there is no list of information that public agencies must publish proactively, such as information regarding the structure and authority of the agency, its budgets and financial reports. And although there is a law providing for public access to government information, this law is to ensure public access to issues related to policy matters (*bestuursaangelegenheden*), rather than to ensure transparency in the management of the public sector. The minister of general affairs is required to publish several administrative decisions in one of the two official gazettes, for example some decisions related to building permits or dispossession,[501] but government is not required to maintain a public central register of all administrative decisions. Vacancies are not legally required to be advertised publicly, and personnel for vacant posts are to be recruited from within the administration first before external recruitment is allowed.[502] Also, there are currently no legal provisions to ensure transparency of public procurement processes. However, there are several provisions to ensure transparency of state property, which include provisions to involve Parliament

[498] Country ordinance Government accounts 2010 (*Landsverordening Comptabiliteitsvoorschriften 2010*), Official Curaçao Gazette 2010, No.87, appendix b, Article 8 and the explanatory memorandum, general part I.3.
[499] Island ordinance containing rules regarding the requirement of the Island Executive to periodically publish policy information (*Eilandsverordening houdende regels inzake de verplichting van het Bestuurscollege tot periodieke publikatie van beleidsinformatie*), Official Curaçao Gazette, 1998, No.4, Articles 1 and 2. Also refer to Official Curaçao Gazette 1998, No.82.
[500] Country ordinance Archive (*Archieflandsverordening*), Country Gazette, 2008, No. 7 and country decree Archive (*Archief besluit*), Country Gazette, 2008, no. 26. Also Ministerial Decree Digital management (*Ministeriële beschikking digitaal management*), Country Gazette, 2008, No.28.
[501] Proclamation ordinance (*Bekendmakingsverordening*), Official Curaçao Gazette 2010, Appendix i, Article 5.
[502] Social Charter Country Curaçao (*Sociaal Statuut Land Curacao*), Offical Curaçao Gazette 2010, No.60, Article 7.

in several decisions, as well as a requirement to annually inform Parliament about its management of state property.[503] (Also refer to the section on Public Procurement below.)

There are no regulations requiring the disclosure of declaration of personal assets, income or financial interests of senior officials in the administration.

By civil law, larger[504] public companies are required to publish their annual reports and accounts, or, more precisely, to make those reports available for inspection to interested parties.[505] Smaller companies and public foundations are not required to do so.[506] The corporate governance code assumes annual reports and annual accounts to be public documents, and also refers to annual reports when discussing 'other public' documents.[507] However, the code neither explicitly nor clearly mentions that public companies and public foundations are required to make their reports public.[508] Public companies and public foundations *may* do so but are not required to accept invitations of Parliament to provide information.[509] Public companies and public foundations are not covered by the country ordinance on public access to government information.

Transparency (practice)

Score: 25

TO WHAT EXTENT ARE THE PROVISIONS ON TRANSPARENCY IN FINANCIAL, HUMAN RESOURCE AND INFORMATION MANAGEMENT IN THE PUBLIC SECTOR EFFECTIVELY IMPLEMENTED?

Although the administration is reported to be working to improve transparency, as yet transparency in financial, human resource and information management in the public sector is not sufficient. Transparency is limited for public companies and almost completely absent for public foundations.

Although there are differences between ministries and agencies, in general, according to those experts interviewed, there is too little transparency and too much bureaucracy in the public sector. Thus, for example, transparency in processes related to the issuing of permits, such as the expected waiting time and the reasons for not yet issuing them, could be improved. Customers are able to direct their queries to *Bentana di Informashon*, and in general the *Bentana* reportedly offers professional and relevant advice, but its function does not go far beyond the provision of general information. For more specific questions, the public is dependent on individual agencies. More generally, as reported earlier in the chapter assessing the Executive, there are no recent reports on the implementation of the regulations to ensure public access to government information. The administration is reported to be working on an information policy, which includes additional efforts to streamline and digitalise the process of issuing permits (*Vergunningenloket*). It is also working on efficiency improvements through the introduction of a shared service centre to include supporting

503 Country ordinance State property (*Landsverordening Domaniale gronden*), Official Curaçao Gazette 2010, No.87, Appendix u, Article 11.
504 Civil Code, Book 2, Article 119.
505 Ibid., Article 122.
506 Ibid., Title V.4.
507 Corporate governance code, 5.1 and 3.12. The code is based on the Dutch '*Code Tabaksblat*', a corporate governance code for listed companies.
508 Corporate governance code, 5.1 and 3.12.
509 Council of State, Request to the Council of State for advice on the provision of information to Parliament by public entities (limited liability companies, foundations and legal persons instituted by public law) (*Verzoek aan de Raad van Advies om advies inzake verstrekking van inlichtingen aan de Staten door overheidsentiteiten (naamloze vennootschappen, stichtingen en bij wet ingestelde rechtspersonen)*), Case number 2012/25443, RVA NO. RA/14-12-DIV 31/01/2013.

activities related to finances, administration, personnel and documentation.[510] However, these improvements are yet to be realised.

Also, because the website of the government is not up to date and was taken offline at the beginning of March 2013, information that is available and was made public earlier, such as public financial management information or more general budget information is no longer easily accessible. If it is accessible, it is through third parties.[511] Transparency in financial management is further decreased because information on Curaçao's accounts is only available with significant delays, and neither information of the administration's internal accountant nor information on bidding procedures is made public.[512]

Transparency in recruitment has also diminished, in part because information previously provided via the website is no longer published, and in part because fewer vacancies are publicly advertised now that ministries are required to look for internal solutions first. Also, information required to be published on personnel developments is published neither consistently nor completely.

As for public companies and public foundations, transparency in practice is mixed, with a somewhat better – but by no means perfect – track record for those companies required by civil law to make their annual reports and accounts available to interested parties. A large majority of public foundations has not made any information public.[513] Nevertheless, as the Executive and supervisors of the public sector are increasing their efforts to obtain information on public entities, transparency is slowly improving.[514] More generally, public access to documents of public companies and public foundations, in as far as those are relevant for the policies of administrative authorities, is still considered to be low. This also hinders accountability of the Executive, because the effectiveness of government's policies based on those documents cannot be assessed. (Also refer to Chapter VII.2 Executive and Chapter VII.8 Supreme Audit and Supervisory Institutions (Public Sector)).

Accountability (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT PUBLIC SECTOR EMPLOYEES HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS?

The legal framework is generally adequate in terms of accountability provisions for the administration, but there is room for further improving the whistleblowing and complaints provisions. There are some provisions to hold public companies and foundations accountable, with a focus on internal accountability.

With the change in constitutional relations, several explicit provisions for whistleblowing on suspected integrity breaches within the administration were introduced. These provisions aim to cover both criminal offences such as bribery and abuse of authority as well as lesser offences such as the leaking of confidential information.[515] Civil servants who have a reasonable suspicion of a

[510] Cf. Curaçao Budget 2013, Country Gazette 2013, No.10, *Algemene Beschouwing*, pp.103-105.
[511] See, for example, www.parlamento.cw for information on Curaçao's budget and on the Ministry of Finance's Financial management report January 2013 [accessed 30 May 2013].
[512] Cft, Report of findings. PEFA-assessment financial management Curaçao (*Rapport van bevindingen. PEFA inventarisatie financieel beheer)*, (Curaçao: Cft, October 2011), p.19.
[513] Also refer to, for example Ministry of Finance's Financial management report January 2013, Appendix 4.
[514] Ibid. Also refer to, for example, Cft, six month report Curaçao and Sint Maarten, July 2012-December 2012 (Curaçao: Cft, January 2013).
[515] Country ordinance Legal and material rights and obligations of civil servants, Section 16 and the explanatory memorandum to that section.

breach of integrity within the organisation, are required to report this to their unit manager who, in turn, is to inform the minister responsible.[516] The internal inquiry may find grounds for disciplinary measures, such as fines, a freeze on promotion or dismissal, and can also result in organisational measures to prevent the integrity breach from happening again. Depending on the case at hand, and mandatory in case of, among others, abuses of office, it may also involve reporting the case to the Public Prosecutor's Office.[517]

There are no provisions to report misconduct anonymously, but the law does provide for a confidant, which allows civil servants to address integrity issues on a confidential basis and be advised on how to deal with knowledge of possible breaches of integrity in the organisation.[518] The confidant cannot be instructed by management, and is only required to report twice a year to the minister responsible in a confidential and anonymised report about the number of times advice was sought and the types of integrity breaches mentioned.[519] Moreover, in view of further policy development and adjustment, the minister of general affairs is required to put in place additional regulations concerning the registration and use of the integrity data compiled.[520]

However, the law only includes a general provision to protect whistleblowers, which states that a whistleblower is not to be disadvantaged in any way in as far as he or she has acted in good faith and does not stand to gain personally from the integrity breach or its notification.[521] There are no concrete protective measures, such as a provision to prove that possible charges against the whistleblower are not linked to the act of whistleblowing. Moreover, although the law facilitates whistleblowing on suspected integrity breaches from within one's own organisation, it does not provide for those outside the organisation – such as those previously employed there – to do so. And because of the overall responsibility of ministers for the internal inquiries, neither does it allow for an effective procedure to report suspected integrity breaches of the Executive. As yet, and as discussed in more detail in the chapter on anti-corruption activities, Curaçao does not have an independent integrity office to serve as a registration point or hotline for integrity issues. There are also no specific requirements for government to report to Parliament about its integrity policy.

Citizens have the constitutional right to submit petitions in writing, and the administrative organisation is required to answer within a reasonable period of time.[522] There are also several provisions for citizens to file complaints. According to the Ombudsman, several ministries are also working on their own regulations to handle complaints, and whereas some are only at the beginning of this process, other ministries are already well underway. However, as yet, there are no uniform petition and complaints procedures and in practice citizens are faced with a variety of sometimes diverging procedures.[523] In addition, of course, citizens may also file a complaint to the Ombudsman or they may appeal a decision of an administrative unit in court, provided that the decision directly concerns them.[524] (Also refer to Chapter VII.7 Ombudsman.)

The Criminal Code contains dedicated chapters on crimes and offences committed by civil servants in their official capacity. Punishable offences include bribery, abuse of authority, extortion, fraud and bribery,[525] as well as lesser offences such as making public confidential information, or withholding government property.[526] (Also see below on Integrity.)

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[516] Ibid., Article 86.
[517] Ibid. Also, Code of Criminal Procedure, Article 200.
[518] Country ordinance Legal and material rights and obligations of civil servants, Section 15.
[519] Ibid., Article 85.
[520] Ibid., Articles 85 and 86 and the explanatory memorandum.
[521] Ibid., Article 87.
[522] Constitution, Article 7.
[523] Also cf. Ombudsman of Curaçao, Annual Report 2011 (Curaçao, Ombudsman of Curaçao: December 2012), p.10.
[524] Country ordinance Administrative law (*Landsverordening Administratieve rechtspraak*), Country Gazette 2006, No.71.
[525] Penal Code, Book 2, Title XXVIII.
[526] Penal Code, Book 3, Title VIII.

Other oversight mechanisms in place are the general internal audit requirements which include supervision on the financial, personnel and other administrations of ministries,[527] and the requirements for the secretary generals to hand in policy plans for their ministries to their respective ministers and report on policies executed.[528] Moreover, the Court of Audit has the authority to audit all administrative agencies, and is to receive a copy of all decrees, decisions and contracts with financial consequences.[529]

As for public companies and public foundations, the corporate governance code contains provisions to ensure accountability within the organisations. The code requires the board of directors to account to the supervisory board, which is, where relevant, in turn required to account to the shareholders, that is, Curaçao.[530] The code also provides for an important role for independent accountants to look into compliance with the code, although in practice the scope of this provision is yet to be fully articulated.[531] Moreover, the government is to supervise the activities of public companies and public foundations, also because they may constitute a financial risk for its public finances. The Court of Audit has a mandate to audit their finances in so far as the country's financial interest – either directly or indirectly – is involved.[532] As of 1 January 2012, a civil inquiry procedure to request an investigation by the Joint Court of Justice into the policy and affairs within legal persons, may also serve to hold public companies and public foundations accountable.[533] However, as noted earlier, Parliament may ask, but cannot require public entities to provide information. Also, apart from some general provisions,[534] there is no comprehensive whistleblowing legislative framework in place covering public companies and public foundations, and company-specific whistleblowing procedures are not widespread.[535]

Accountability (practice)

Score: 50

TO WHAT EXTENT DO PUBLIC SECTOR EMPLOYEES HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS IN PRACTICE?

Internal accountability mechanisms in the administration are not yet fully implemented in practice, but accountability of agencies through the activities of the Ombudsman, the Court of Audit and, albeit to a lesser extent, the Public Prosecutor's Office is provided for. Accountability of public companies and public foundations is hampered because of late or no reporting.

The new provisions described above provide the foundation for the internal reporting and sanctioning of integrity breaches, but little is yet translated into effective mechanisms and government is reported to exercise restraint in sanctioning. Also, up to now, no confidants have

[527] Country ordinance Government accounts 2010, Article 41.
[528] Country ordinance Organisation public administration, Article 2; also Article 15.
[529] Country ordinance General Court of Audit Curaçao (*Landsverordening Algemene Rekenkamer Curaçao*), Official Curaçao Gazette 2010, No.87, Appendix h, Article 40. Also refer to ARC 23 December 2010: 22.
[530] Island decree Code corporate governance Curaçao, 1 (General principles (*Algemene beginselen*)).
[531] Ibid., 4.5 (Report and account regarding corporate governance (*Verslag en verantwoording inzake corporate governance*)).
[532] Country ordinance General Court of Audit Curaçao.
[533] Civil Code, Book 2, Article 271.
[534] Cf. Civil Code, Book 7A, Article 1614y on good employment practices (*goed werkgeverschap*). Also Code of Criminal Procedure, Article 261, on at-risk witnesses (*bedreigde getuigen*). Also see KLPD, 2009: 206.
[535] But see for example, 'Whistleblower regulation Aqualectra' (*Klokkeluidersregeling Aqualectra*), 6 July 2011, via www.versgeperst.com [accessed 6 June 2013].

been appointed. Every ministry is reported to have a complaints official, but as yet there is neither a central complaints procedure nor a central register of complaints.[536]

As a result, the administration itself does not have an overview of the number and type of whistleblower reports and complaints. More information is available on complaints about the administration from the Ombudsman, who annually publishes several statistics. Thus, for example, in 2011, the Ombudsman received 328 formal complaints related to ministries, service departments included.[537] Many complaints dealt with by the Ombudsman concern the issuing of immigration permits and passports, land management and requests for financial support, for example related to long, drawn-out procedures.[538] Several of the complaints filed also relate to suspected integrity breaches, but those complaints are not reported on separately. In some cases, the Ombudsman also investigates on his/her own initiative.[539] On an individual case basis, many complaints are dealt with successfully, but structural improvements are more difficult to attain. (Also refer to Chapter VII.7 Ombudsman.) Administrative law procedures are also used in practice. However, as one expert pointed out, they seem to lose some of their effectiveness because it can take a considerable amount of time for procedures to be considered in court. Moreover, in case of a lack of decision making, effective redress may take even longer, because court proceedings often result in a 'judicial *perpetuum mobile*' with, again, long drawn-out procedures.[540]

The Public Prosecutor's Office does not publish separate statistics for charges related to abuses of office or related offences. However, civil servants are in practice sometimes convicted for wrongdoing. Thus, for example, in 2010 seven civil servants of the public registry were reported for, *inter alia*, forgery and fraud, and later convicted. Among other things, they were not allowed to take on a position as civil servant for five years.[541] However, several experts noted that although there are adequate provisions to report abuses, in practice due to the risks involved in naming and shaming (in, for example, newspapers) and fear of job loss, only a few people actually consider filing charges.

Administrative agencies are also audited, and the Court of Audit does report positive developments in parts of the administration's financial management.[542] However, so far, the Court of Audit's main conclusion is that Curaçao's financial management cannot yet be described as orderly and auditable.[543] And a self-assessment concludes that, although procedures are sufficient, the number of internal controls, as well as the number of audits of the administration's internal accountant, SOAB, need to be increased. The self-assessment also notes that recommendations of the internal accountant are only partly observed in practice.[544] (Also refer to Chapter VII.8 Supreme Audit and Supervisory Institutions Public Sector.) In a report on the issuing of leasehold land to waiting-list candidates, the Court of Audit hardened its tone, and judged the failure to provide copies of concluded leasehold land decrees, according to the government 'an omission', to be 'very severe'.[545]

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536 Also see Commission of experts, Assessment of government apparatus Curaçao and Sint Maarten (s.l.: Commission of experts, May 2010), p.43.
537 See, for example, Ombudsman of Curaçao November 2012: 17.
538 See, for example, Ombudsman of Curaçao, November 2012: 20-21.
539 See,for example, Ombudsfunktionaris of Curaçao, Annual Report of the Ombudsfunktionaris of the Island Territory of Curaçao 2009 (Curaçao: Ombudsfunktionaris of Curaçao, May 2011): p.26; Ombudsfunktionaris of Curaçao, Annual Report of the Ombudsfunktionaris of the Island Territory of Curaçao 2008 (Curaçao: Ombudsfunktionaris of Curaçao, May 2011): p31.
540 Trial brief Foundation for a Clean Environment on Curaçao (SMOC) (*Pleitaantekeningen Stichting Schoon Milieu op Curaçao [SMOC]*), HLAR 48338-2012, 2 April 2012.
541 Public Prosecutor's Office Curaçao, Annual Report 2011 (Curaçao, Public Prosecutor's Office: s.d.), p.17.
542 ARC, Report of activities during the years 2009, 2010 and 2011 (Curaçao: ARC, October 2012), p.21.
543 Ibid., p.13.
544 Cft October 2011: 8-9. Also Cft, Report of findings. PEFA-assessment financial management Curacao (*Rapport van bevindingen. PEFA-inventarisatie financieel beheer Curacao*) (Curaçao: Cft: February 2013): pp.28-29.
545 ARC 23 December 2010: 22.

Accountability of public companies and public foundations is hampered in practice, although accountability of public companies is more developed than that of public foundations. Public foundations often have less experience with the issues covered in the corporate governance code, and at the moment, many public foundations do not account for subsidies received, or the way they have implemented the code in practice.[546] However, information of public companies is also not always provided for within a reasonable time frame,[547] and because the majority of public companies do not make their annual reports and accounts public, it cannot be publicly assessed to what extent the corporate governance provisions in the code have been successfully implemented. Also, Parliament in practice has not yet been able effectively to collect sufficient information to hold the Executive accountable for its oversight, and third parties are equally reported to experience difficulties. As far as could be established, as yet the practice of the Code has not yet been monitored.[548]

On the positive side, however, the Ombudsman does register complaints about public companies and public foundations, and deals with them in consultation with those entities on a voluntary basis.[549]

Integrity mechanisms (law)

Score: 75

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THE INTEGRITY OF PUBLIC SECTOR EMPLOYEES?

There are robust integrity rules for the public sector, including registration requirements for gifts and additional functions. Relevant provisions for adequate screening for positions involving confidentiality, however, are not yet fully in place.

The ordinance regulating the rights and duties of civil servants includes many provisions to ensure the integrity of civil servants, including some already referred to above. (Also refer to the section on Accountability.) The ordinance covers all civil servants, defined as those appointed to the public service.[550] It does not cover those contracted based on civil law and also excludes several officials in particular, such as ministers, board members of the Council of State and the Court of Audit, as well as the Ombudsman and the procurator general.[551]

Prior to appointment, civil servants are to be able to make a declaration of good conduct (*verklaring van goed gedrag*).[552] They are also required to affirm or take an oath declaring that they have not given or promised anything to obtain their office and will not do so, and will not be bought, as well as taking an oath of office.[553] While in office, additional activities, gifts and travelling at the expense of third parties are regulated. Thus, for example, civil servants are not to engage in additional activities if this conflicts with the proper performance of their duties or that of the administrative unit involved, and must report their additional activities in writing. Whether their activities are or are not allowed, is to be decided by the unit manager, who may also attach conditions to their continuation. In contrast to legislation relevant to the Netherlands Antilles, both the reports of additional activities as well as

546 See Cft January 2013: 11.
547 Ibid. Also, for example, Ministry of Finance's Financial management report January 2013, Appendix 4.
548 See Island ordinance Corporate governance, Article 3.2.
549 See for example Ombudsman of Curaçao, November 2012.
550 Country ordinance Legal and material rights and obligations of civil servants, general part of the explanatory memorandum.
551 For a discussion of the relevant integrity framework for the Executive, the Court of Audit, the Ombudsman and the procurator general please refer to the separate chapters on those institutions.
552 Country ordinance Legal and material rights and obligations of civil servants, Article 6.
553 Ibid., Article 44.

the decisions of unit managers are to be registered.[554] Also, civil servants are not allowed to accept public works contracts, public supply contracts and public service contracts, or provide guarantees for or – directly or indirectly – have an interest in those activities.[555] And they may also be – but are not necessarily – prohibited from being a board member or shareholder of companies, foundations and associations which regularly come or may come into contact with the unit in question.[556]

Civil servants are also prohibited from accepting gifts without prior permission of their unit manager.[557] Gifts representing a value of more than NAf 100 (ca. US$ 56) are not permitted,[558] and neither is the acceptance of gifts offered in the course of granting a commission. Civil servants may never request or promote the offering of those services that could influence the performance of their duties and must inform their supervisors of any such offers. Again, registration is required, including of gifts offered and the decisions of unit managers whether or not to accept them.[559] However, there are no post-employment restrictions, such as those prohibiting civil servants from joining organisations they supervised as part of their office duties.

Civil servants are also bound to secrecy unless given prior permission, and may not abuse information collected in the course of their duties.[560] They may also not use their work hours nor government-owned property to further their own or third parties' private interests.[561] Moreover, if a civil servant is regarded as a suspect in an ongoing criminal investigation, he may [but is not required to] be suspended.[562]

Importantly, an additional safeguard to ensure the integrity of civil servants is incorporated in the regulations regarding the activities of the Security Service Curaçao (VDC –Veiligheidsdienst Curaçao). For positions involving confidentiality (*vertrouwensfuncties*), a thorough and regular screening by the Security Service is mandatory.[563] These positions are likely to include staff positions at ministries and at the top of the police force. They may also include management and other positions in so-called 'vital sectors', such as the production and distribution of drinking water, electricity, telecommunications and (air)ports.[564] To date, however, no positions have been classified as such. (Also refer to Chapter VII.2 Executive.)

As mentioned above, abuses of office, such as bribery and extortion, are criminal offences. Deliberately accepting – directly or indirectly – public works contracts or public supply contracts while being assigned to manage or supervise them, is also a criminal offence.[565] Moreover, there is a general provision which requires civil servants to report abuses of office and other related crimes of which they have become aware while carrying out their official duties, with a few exceptions such as those related to the risk of incriminating oneself.[566]

The corporate governance code also contains several provisions to safeguard the integrity of both members of boards of directors and supervisory boards of public companies and public foundations. Thus, for example, it contains provisions designed to prevent conflicts of interest. This includes the requirement to prevent the perception of a conflict of interest, and a notification requirement for potential conflicts of interests. There is no explicit provision prohibiting the acceptance of gifts from third parties, but there is a provision to prohibit gifts *from* the public entity. There are no provisions to

[554] Ibid., Article 52.
[555] Ibid., Article 54.
[556] Ibid., Article 55
[557] Ibid., Article 58.
[558] Ibid. According to Article 59, the precise amount may be determined, that is, adapted, by country decree.
[559] Ibid., Article 59. Also see Article 61.
[560] Ibid., Articles 62 and 63.
[561] Ibid., Articles 47 and 57.
[562] Ibid., Article 94.
[563] Country ordinance Safety service Curacao (*Landsverordening Veiligheidsdienst Curaçao*), Offical Curaçao Gazette, 2010, No.87, Appendix j, Article 15.
[564] Ibid., explanatory memorandum to Article 15.
[565] Penal Code, Book 2, Title XXVIII, Article 361.
[566] Code of Criminal Procedure, Article 200.

prevent blood relations or other family ties between board members and ministers, in their capacity representing the shareholder or as appointing minister. The corporate governance code also requires government to establish a body, separate from the corporate governance advisor, to advise government on the actual selection and appointment of individual board candidates, including the recurring assessment of their performance.[567] However, although the corporate governance advisor has repeatedly stressed its importance, as yet, no such body has been established.[568]

Integrity mechanisms (practice)

Score: 50

TO WHAT EXTENT IS THE INTEGRITY OF PUBLIC SECTOR EMPLOYEES ENSURED IN PRACTICE?

There is no information on the workings of the integrity provisions in practice, and an effective mechanism to enforce the integrity rules is lacking.

For more than 10 years now, integrity has been defined as one of the core values for the public sector. In those years, several activities have been undertaken, such as training of management and personnel, baseline studies and road maps. (Also refer to Chapter VI. Anti-corruption Activities.) Against this background, specific information about the number of integrity incidents is remarkably absent, although there are some documented cases related to criminal convictions, such as the seven civil servants reported above. Transparency International was informed the current administration is working on an integrity policy – including a sanction policy, integrity norms and a code of conduct, but these are not yet adopted. Also, as mentioned, confidants have not yet been appointed, and the required registers on additional activities, gifts and integrity data are not yet fully in place.

Because of this, although most experts from within the administration indicated that they believe existing integrity rules are generally complied with, there is insufficient information to assess this independently. More generally and also indicated by some of the same experts interviewed, because compliance is not monitored consistently, there is insufficient information to assess the bigger picture. A study some years ago drew a similar conclusion, but did make mention of a number of individual breaches of integrity, for example related to public procurement and bribery.[569] In this assessment, experts interviewed from outside the administration indicated that, in general, compliance with existing integrity rules is only monitored incidentally, or, worse, only in cases of 'witch-hunts' as part of individual smear-campaigns. Most experts also indicate that communication on core values is not actively provided for, and, although training opportunities are expected to increase, so far there have been few training opportunities to increase awareness on the existing provisions. On the positive side, however, the administration is reported to pay attention to issues related to job rotation and training of personnel in functions sensitive to corruption ('*gevoelige functies*').

Public companies and public foundations are required to report in which way they have ensured compliance with the provisions of the code in their annual reports, and it is up to the supervisory boards and, where relevant, the shareholders, to monitor compliance in practice. Whether or not they do so requires an analysis of the annual reports, if those reports are in fact made available.

[567] Island decree Code corporate governance Curaçao, 4.2 (Selection and appointment of commissioners and executive directors [*Selectie en benoeming van commissarissen en bestuurders*]).
[568] See, for example, SBTNO, Advice concerning intention appointment board members Foundation Fundashon Tayer Soshal (*Advies inzake voornemen benoeming bestuursleden Stichting Fundashon Tayer Soshal*) (Art. 9, AB 2009, No. 92), 20 March 2013.
[569] KLPD, 2009: 136-142.

Role

Public education

Score: 0

TO WHAT EXTENT DOES THE PUBLIC SECTOR INFORM AND EDUCATE THE PUBLIC ON ITS ROLE IN FIGHTING CORRUPTION?

The public sector does not presently engage in any significant activities designed to inform the public about corruption-related matters.

The average citizen is considered to be reasonably informed about where and how to complain about corrupt practices in as far as it concerns external complaint procedures through the Ombudsman and the law enforcement agencies. Also, the Ombudsman now has a new website which allows the public to file a complaint about the conduct of administrative bodies.[570] However, according to the Ombudsman, not all administrative bodies are equally receptive to dealing with complaints. Some administrative bodies are reported to be accessible and accommodating, while other units barely cooperate or do not cooperate at all, as a result of which complaints resolutions are very difficult.[571] (Also refer to Chapter VII.7 Ombudsman.)

Moreover, according to the experts interviewed, there are no specific programmes run by the public sector to educate the public on corruption and how to curb it. There have been some efforts in the past, for example using posters to inform the public of integrity programmes run within the public sector. There are also some policy plans to communicate quality standards and principles of administrative integrity in the public sector. However, as yet, the public sector does not actively inform the public about its role in preventing corrupt practices.

Cooperation with third parties

Score: 25

TO WHAT EXTENT DOES THE PUBLIC SECTOR WORK WITH PUBLIC WATCHDOG AGENCIES, BUSINESS AND CIVIL SOCIETY ON ANTI-CORRUPTION INITIATIVES?

Apart from initiatives to further financial integrity within the framework of (C)FATF, the public sector hardly works with public watchdog agencies, business and civil society on anti-corruption initiatives.

Curaçao participates in the (Caribbean) Financial Action Task Force (C)FATF regarding anti-money laundering and the combating of terrorist financing, which is further discussed in the chapter on the supervisory institutions of the private sector (Chapter VII.14). In addition, the current coalition partners have committed to ‘concrete programmes and projects aimed to strengthen the integrity and quality of government and administration’ and to do so in close collaboration with local, regional and international organisations specialising in these issues.[572]

However, as yet no initiatives of the public sector actively working with public watchdog agencies, business and civil society on anti-corruption initiatives have been reported. Also, Curaçao’s activities

570 See www.ombudsman-curacao.cw [accessed 27 May 2013].
571 Ombudsman van Curaçao November 2012: Section 2.5.
572 Coalition agreement aimed at peace, tranquility and prosperity, period 2012-2016 (*Akuerdo pa un Gobernashon enfoká riba pas, trankilidat i prosperidat, period 2012-2016*), 12 December 2012, p.6.

in the (C)FATF do not extensively cover the non-profit sector, that is, associations and foundations, and (C)FATF reports there is no supervision or monitoring especially for the non-profit sector, nor is there an outreach and training programme in place.[573] Moreover, although an initiative to install a special 'Good Governance' university chair to promote research into good governance of government, civil society and the business sector did result in some activities several years ago, it seems to have come to a halt. (Also see Chapter VII.12 Civil Society.)

Reduce corruption risks by safeguarding integrity in public procurement

Score: 50

TO WHAT EXTENT IS THERE AN EFFECTIVE FRAMEWORK IN PLACE TO SAFEGUARD INTEGRITY IN PUBLIC PROCUREMENT PROCEDURES, INCLUDING MEANINGFUL SANCTIONS FOR IMPROPER CONDUCT BY BOTH SUPPLIERS AND PUBLIC OFFICIALS, AND REVIEW AND COMPLAINT MECHANISMS?

At the moment, there is no formal legal framework for public procurement, and the administrative regulations used allow for quite some leeway. Whether or not integrity in public procurement is ensured in practice cannot be established because little information is made public.

Before the change in constitutional relations, both the country and island regulations established open bidding as the general method of public procurement. They also provided for the possibility to deviate from this principle. Thus, deviation was possible if the minister of finance[574] or the Island Council[575] considered such to be in the interest of the country or the island. What was to be considered 'in the interest' was not further specified, although at the country level the motivations behind deviating were required to be notified in the procurement decision ordering the public works, public supplies or public services.[576] On the island level, deviation was also possible below certain specified estimated contract sums. In those cases, as mentioned, the Executive was required to 'as much as possible' choose between at least three offers.[577] The law did not detail procedures to follow in case of deviation from open bidding, but the minister of finance had ruled that below a certain financial threshold open bidding was not required.

However, with the change in constitutional relations, provisions as included earlier no longer have force of law.[578] At the moment, there is no corresponding legislation to regulate public procurement. Legislation is, however, reported to be on its way, and it is understood that the Council of Ministers agreed to act in accordance with the legislative framework and the underlying administrative regulations in place prior to October 2010. The guiding principle, then, is still open bidding as the general method of public procurement, but a transparent process of closed bidding including multiple offers is allowed below certain estimated contract sums.

The Court of Audit and the administration's internal auditor do audit procurement processes, but they only do so ex-post, and there is no agency that supervises the process from start to finish. There is also a complaints mechanism in place, most notably that of filing complaints with the Ombudsman. However, the Ombudsman does not have the power to suspend the procedure.

573 CFATF, Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism, Curaçao, (s.l.: CFATF, June 2012), pp.213-219.
574 Country ordinance Regulations as regards management and accounting of the country's financial means Netherlands Antilles (*Comptabiliteitslandsverordening Nederlandse Antillen*), Article 27.
575 Island ordinance Financial management Curaçao, Article 12.
576 Country ordinance Regulations as regards management and accounting of the country's financial means Netherlands Antilles, Article 27.
577 Island ordinance Financial management Curaçao, Article 12.
578 See Appendix B of the country ordinance changing the General transitional regulation legislation and government country Curaçao (*Landsverordening tot wijziging van de Algemene overgangsregeling wetgeving en bestuur land Curaçao*), Official Curaçao Gazette 2010, No.102.

Moreover, even though, as noted above, the public is generally well informed about the services of the Ombudsman, it is not so well known that the Ombudsman also serves to investigate complaints related to public procurement, and it is understood that only very few such complaints have been reported to the Ombudsman.[579] There is no competition authority in place to enforce fair competition and sanction anti-competitive behaviour in procurement processes.

More generally, as already mentioned above, there are some specific provisions and corresponding criminal law provisions related to integrity breaches in public procurement. Also, there are some rules related to the registration of those authorised by the minister to conduct private legal acts and also register the amount to which they are entitled to do so. The register is required to be made public, and needs to be republished whenever changes are registered. The general public, including suppliers and service providers, should thus be able to assure themselves that those signing contracts are indeed authorised to do so.[580] However, as was already referred to in the chapter assessing Parliament, this register does not yet exist, and some months ago Parliament voted in favour of a motion to request the Executive to create the register.[581] Furthermore, the results of bidding processes are not always made public in practice.[582]

In practice, the procedures as currently used for public procurement are reported to leave a lot of leeway. According to some experts interviewed, it is also not sufficiently clear what procedures to follow in case open bidding in not used, which allows for preferential treatment towards some and not others. Consequently, the practice of public procurement is also reported to differ between ministries and agencies, and it is certainly no exception that open bidding is not used, often because such procedures take a lot of time, or because there is only a very small number of possible suppliers to choose from.

When sufficiently motivated, these reasons may very well be valid. However, there have also been a number of cases in which the procedures followed raised questions, in several instances also related to involvement of the Executive. According to the Crime Analysis of 2008, there have been several cases in which companies could be awarded government contracts in exchange for secret donations to political parties. This also resulted in several convictions.[583] More recently, since October 2010, questions were raised about, for example, the procurement of traffic island and road signage,[584] building facilities for a decompression chamber,[585] and the outsourcing of the recruitment of the new administrative organisation.[586] Similar questions have been asked in relation to procurement decisions of public companies or public foundations, for example in relation to the repair works in the educational sector,[587] a lease concession at the harbour,[588] and the building of a solar panel park.[589] Not all questions raised have yet been answered, and some are currently under investigation. Moreover, not all conclusions of investigations already conducted have been made public. However, more generally, on more than one occasion investigations into public contracting found irregularities, such as missing executive decisions, incomplete contracts for rental arrangements, as well as unmotivated deviation of administrative advice by the Executive. In a 2009 report about the renting of buildings, the Court of Audit concluded that direct interference of

[579] Cft October 2011: 8.
[580] Country ordinance Government accounts 2010, Article 40.
[581] 'Motion public register adopted' (*Motie openbaar register aangenomen*), 20 February 2013, via www.versgeperst.com [accessed 16 April 2013].
[582] Cft October 2011: 8. Cf. Cft February 2013: 27.
[583] KLPD, 2009: 139.
[584] 'Also irregularities with road signage' (*Ook onregelmatigheden met verkeersborden)*, 23 March 2013, via www.kkcuracao.com [accessed 7 June 2013].
[585] 'SOAB investigation decompression chamber' (*SOAB-onderzoek naar druktank*), 19 March 2013, via www.kkcuracao.com [accessed 7 June 2013].
[586] Eustatius, 2012: 41.
[587] 'Unanimous for improvement Feffik' (*Unaniem voor verbetering Feffik*), 16 March 2013 via www.kkcuracao.com [accessed 4 June 2013].
[588] CPA commissioners wanted to force concession through (*CPA commissarissen wilden consessie doordrukken*), 16 January 2013 via www.kkcuracao.com [7 June 2013].
[589] 'Agreement Aqualectra for solar panels' (*Akkoord Aqualectra voor zonnepanelen)*, 27 June 2012 via www.versgeperst.com [7 June 2013].

members of the Executive is in conflict with the principles of good governance and good financial management.[590] In a more recent report on public contracting since October 2010, SOAB is reported to have found several similar irregularities.[591]

[590] ARC, Report renting buildings Island Territory Curaçao (*Rapport huur gebouwen Eilandgebied Curaçao*), 100/09/CUR, 29 October 2009, p.15.
[591] See for example 'Government terminates payment IDG' (*Regering stopt betaling aan IDG*), 26 March 2013, via www.versgeperst.com [accessed 7 June 2013].

VII.5 LAW ENFORCEMENT AGENCIES

STRUCTURE AND ORGANISATION

Curaçao has a number of agencies whose main task is law enforcement. Since 10 October 2010, and as part of the agreements between the Kingdom partners to reorganise constitutional relations, the Police Force Curaçao (KPC – *Korps Politie Curaçao*) was introduced, with special investigation units such as the Bureau for Financial Investigations (*Bureau Financiele Onderzoeken*) which already existed before 2010. Other local law enforcement agencies are the *Landsrecherche*, Curaçao's special police force established as a unit for the former Netherlands Antilles in 1996, and dedicated to investigating possible criminal conduct of government officials and public servants. In addition to these local law enforcement agencies, in 2001 the Police Investigation Cooperation Team (RST – *Recherche Samenwerkingsteam)* was established. The main task of this cooperation between the Kingdom countries is the investigation of international and organised crime, and crimes for which special expertise is required.[592]

The organisational and management structure and the tasks of the police forces are laid down in the Kingdom Act Police of Curaçao, Sint Maarten and Bonaire, Sint Eustatius and Saba[593] (referred to below as Kingdom Act Police) which came into force on 10 October 2010.

In addition, as of 10 October 2010, the Kingdom Act on the Law Enforcement Council (*RvdR – Raad voor de Rechtshandhaving*) came into force.[594] This Act positions the Law Enforcement Council (temporary) as an independent inspectorate for Curaçao, Sint Maarten and the Caribbean part of the Netherlands. Its board, only appointed in May 2011, has three members. The Council is responsible for the general inspection of the effectiveness, quality of the performance of duties and management of institutions such as the police, police training bodies, the Public Prosecutor's Office and the prison.[595] The Council is also charged with the general inspection of the quality and effectiveness of judicial cooperation between the Kingdom partners, such as cooperation between the three police forces, cooperation in the fight against cross-border crime, the mutual exchange of detention capacity, and the Coast Guard in as far as it is concerned with the judicial tasks of the Coast Guard.[596] The Council may not interfere in individual criminal investigations or prosecutions of punishable acts.

Although the Constitution includes the Public Prosecutor's Office together with the Joint Court of Justice as belonging to the judiciary,[597] the Constitution also states that the procurator general, as head of the Public Prosecutor's Office, is responsible for the judicial police (*justitiële politie*) and underscores the procurator general's leading role in the detection and prosecution of punishable acts. The procurator general is also to guard the proper exercise of police tasks.[598] The legal powers

[592] See RST Protocol 30 November 2001, Articles 1 and 2 and RST's annual plan 2013, 12 December 2012, p.4.
[593] State Gazette Kingdom of the Netherlands, 2010, No.337, Article 4 concerns the KPC, Article 9 the *Landsrecherche Curaçao* and Article 57a the *Recherche Samenwerkingsteam* (*below: Kingdom Act Police*).
[594] State Gazette Kingdom of the Netherlands, 2010, No. 338, Kingdom Act on the Law Enforcement Council. Also refer to Articles 42 and 32 of that Act.
[595] Ibid, Article 3.2 and the explanatory memorandum.
[596] Ibid, Article 3.3 and the explanatory memorandum.
[597] Constitution of Curaçao (*Staatsregeling van Curaçao*), Official Curaçao Gazette 2010, No. 86. Article 105.
[598] Constitution, Article 107 and the explanatory memorandum

and authorities of the Public Prosecutor's Office and the Joint Court, their different roles and responsibilities in the judicial chain, are further detailed in different Kingdom Acts.[599]

For the purposes of this assessment, this chapter therefore includes the assessment of the Public Prosecutor's Office in the pillar 'law enforcement agencies'.

There is a single procurator general for all the Caribbean parts of the Kingdom, except for Aruba which has its own procurator general. The procurator general, the *Parket Procurator General (Parket PG)*, together with the Public Prosecutor's Office in first instance[600] forms the Public Prosecutor's Office Curaçao. The office of the advocate general and the Department of Policy and Strategy, and an administrative unit, are part of the *Parket PG.*

The organisational and management structure and the tasks of the Public Prosecutor's Office are laid down in the Kingdom Act Public Prosecutors' Offices of Curaçao, Sint Maarten and of Bonaire, Saint Eustatius and Saba.[601]

Although all agencies mentioned above are regularly confronted with, and do sometimes investigate integrity issues such as corruption, this chapter discusses the two main police forces in Curaçao responsible for the detection and investigation of corruption, that is, the Police Force Curaçao and the Curaçao special police force, and the institution responsible for prosecution, the Public Prosecutor's Office Curaçao.

ASSESSMENT

Capacity

Resources (practice)

Score: 50

TO WHAT EXTENT DO LAW ENFORCEMENT AGENCIES HAVE ADEQUATE LEVELS OF FINANCIAL RESOURCES, STAFFING, AND INFRASTRUCTURE TO OPERATE EFFECTIVELY IN PRACTICE?

The Public Prosecutor's Office Curaçao appears to have adequate financial resources, but the financial and human resources of the local police forces (Police Force Curaçao and the Curaçao special police force) are reported to be insufficient. Also, the efficiency and quality of the law enforcement agencies may improve. There are serious concerns about the information processes of both the police forces and the Public Prosecutor's Office.

Although the Ministry of Justice has been one of the largest recipients of state funding in recent years, financial and human resources available to the local police forces – Police Force Curaçao and the Curaçao special police force – are considered to be far from sufficient. As part of the agreements between the Kingdom partners to reorganise constitutional relations in 2010, an 'Establishment Plan Police Force Curaçao' (*Inrichtingsplan KPC)*[602] came into force. The plan is directed towards the transformation of the police over a period of three years. A recent evaluation

[599] Cf. Constitution, Articles 99 and 108.

[600] Ibid, 2010, No. 336, Article 1.
[601] Ibid, 2010, No. 336, Chapter 2 and 3.
[602] *Inrichtingsplan KPC*, 2010.

report shows improvement in some fields, for example housing, but not in others.[603] Agreement about personnel issues with the police trade unions, as required by law, has not yet been reached[604] and the country's fiscal situation negatively affects the project's progress.

The interviewees argued that, ever since its establishment in 1996, the special police force has suffered from inadequate resources, both in terms of finances as well as staffing and housing facilities. According to the formation plan (see below), the special police force should employ 24 people, but in practice there is a staff of 11 people.[605] This lack of resources has put restrictions on the number of cases investigated. At present, the 'Establishment and Formation Plan' (*Inrichting- en formatieplan*, I&F 2011) of the special police force has been approved by the government and is waiting to be formalised and executed.

The police force (Police Force Curaçao and the special police force) is funded through the regular Curaçao State budget according to its approved budget to be determined by the minister of justice of Curaçao in accordance with the minister of finance of Curaçao. As administrative bodies responsible to the minister of justice, the police force budgets remain at the discretion of the minster of justice, and to use it the police force needs to follow several administrative procedures which suffer long delays.[606] In practice, up to now the approved budget has always been less than the actual budget. The budget of the Police Force Curaçao was supplemented with subsidies from the Executing Agency of the Foundation for the Development of the Netherlands Antilles (USONA),[607] previously known as the Netherlands Antilles Development Foundation and in large part financed by the Dutch government. These subsidies ended in 2012.

The ministers of justice of the three Kingdom countries[608] determine the annual budget of the Public Prosecutor's Office Curaçao in accordance with a share ratio determined by the Council of Ministers of the Kingdom and in accordance with the goals and activities mentioned in the Public Prosecutor's Office annual plan.[609] The resources available to the Public Prosecutor's Office are considered to be adequate. In general there is an adequate number of public prosecutors.

However, there are some serious concerns about both the Police Force Curaçao, the special police force and to a lesser extent the Public Prosecutor's Office. Financial and human resources are not always managed in an efficient and effective way to enable all tasks to be performed properly.[610] For instance, some current police officers are said to be overburdened, while others appear to have time on their hands. Moreover, the quality of human resources is mentioned as a serious concern. There is a structural lack of specific expertise, such as financial and forensic expertise. For instance, the special police indicated the need for a chartered accountant and the Public Prosecutor's Office indicated the need for public prosecutors with financial experience. In addition, several respondents expressed doubts about the language level of staff members of the police and to a lesser extent of staff members of the Public Prosecutor's Office. In recent decades the local language, Papiamentu, has gained significance in the educational system in Curaçao, and knowledge of the Dutch language has declined. However, all laws and other legal documents are published in Dutch and the prescribed language at the school for police officers and the University of Curaçao is Dutch. The working language of the police and the Public Prosecutor's Office is Dutch, and law is a profession where language is of the utmost importance. As a consequence, it has become more and more

[603] 5th Execution progress report Implementation plan Police Force Curaçao (*5de Uitvoeringsrapportage Implementatieplan Korps Politie Curaçao*), 9 October 2012.
[604] Letter of the minister of the interior and kingdom affairs to the chair of parliament of the Netherlands, 7 January 2013.
[605] Annual report *Landsrecherche* 2012, Curacao April 2013, p.3.
[606] Country ordinance Government accounts, 2010, No. 87, Article 39.
[607] Security Plan Netherlands Antilles *(Plan Veiligheid Nederlandse Antillen – PVNA).*
[608] Except Aruba.
[609] Kingdom Act Public Prosecutors Offices, 2010, No. 336, Article 29.
[610] Commission of experts, Assessment of government apparatus Curaçao and Sint Maarten, May 2010, p.27.

difficult for staff to reach an adequate level of expertise.[611] On the positive side, this matter has the attention of the Public Prosecutor's Office and a language course for staff members was recently organised.

Another concern relates to information. There are continuous complaints about the information system used by the police, *Actpol*. The system is said to be user-unfriendly and police officers complain about the time required to register the reported offences and crimes. Moreover, because instructions are not always followed, reporting is incomplete or missing.[612] And although financial resources of the Public Prosecutor's office are sufficient, there are some worries about the ICT infrastructure. The amount of computers and other hardware is deemed to be sufficient, but the software available is inadequate to properly gather, analyse and use information, the core business of the Public Prosecutor's Office.[613] Also, the provision of information by the police remains deficient.[614]

Salary scales for police officers are based on different positions and seniority.[615] According to the interviewees the salaries are sufficient, but salaries have nevertheless been an issue for many years now because rules and regulations are not properly applied by the administration.[616] The average income of the public prosecutor is by far the highest of the public sector in Curaçao,[617] and exceeds that of a minister in Curaçao. Nevertheless, and although the salaries of public prosecutors lag somewhat behind those paid to legal experts in the private sector, the salaries provided appear sufficient to attract personnel.

Independence (law)

Score: 50

TO WHAT EXTENT ARE LAW ENFORCEMENT AGENCIES INDEPENDENT BY LAW?

The legal framework contains several provisions designed to ensure the independence of law enforcement bodies, such as robust provisions to appoint, suspend and dismiss law enforcement officers. The minister of justice has a strong position in the system.

The police chief (*korpschef*) of the Police Force Curaçao, the head of the special police force and other policemen are all appointed, suspended and dismissed by country decree. The police chief is appointed by recommendation of the minister of justice of Curaçao, in accordance with the procurator general.[618] The head of the special police force is appointed by recommendation of the procurator general.[619]

Because policemen are civil servants, the rules regarding appointment, suspension or dismissal from the country ordinance Legal and material rights and obligations of civil servants

[611] Law Enforcement Council, *The reporting process on Curaçao*, Inspection report of the Law Enforcement Council, May 2012, p.36.
[612] Ibid. p.29.
[613] Annual report Public Prosecutor's Office 2011, Parket Curaçao, p.24-25.
[614] Law Enforcement Council, The *reporting process on Curaçao*, Inspection report of the Law Enforcement Council, May 2012, p.29.
[615] *Bezoldigingsbesluit 1998 and Rechtspositiebesluit Politie.*
[616] See, for example, ARNA, Research report (*Uitbetaalde toelagen en vergoedingen aan het (executief) personeel van het KPC*) (Curaçao: ARNA, 8 April 2010) and 'Action against reduction of fees' *(Actie tegen korting toeslagen)* 7 November 2011, via www.rnw.nl [accessed: 11 March 2013].
[617] State Gazette Kingdom of the Netherlands, Kingdom Decree Legal position members Public Prosecutor's Office, 2010, No. 359, Article 10.4 (*below: Kingdom Decree Legal position*).
[618] Kingdom Act Police, 2010, No. 337, Article 44.1.
[619] Ibid, Article 9.2

(Landsverordening Materel Ambtenarenrecht)[620] apply alongside the Legal Position Decree Police (*RPB – Rechtspositie Besluit Politie*)[621]. The criteria are formulated in a rather generic manner, for example the civil servant needs to 'behave decently', pass a medical test, understand Dutch and also Papiamentu if the position requires.

The procurator general and the advocate general are appointed by Kingdom Decree at the proposal of the ministers of justice of the three countries. The chief public prosecutor is also appointed by Kingdom Decree, but at the proposal of only the minister of justice of Curaçao. If a vacancy for procurator general and advocate general arises, the Joint Court of Justice and Public Prosecutor are invited to put forward a common, non-binding joint recommendation. The recommendation for the chief public prosecutor is made by the procurator general, who has heard the opinion of the Common Court.[622] The other members of the Public Prosecutor's Office are appointed by the minister of justice of Curaçao by country decree at the proposal of the procurator general.[623] The criteria which much be met to become a public prosecutor are strict. A selection commission selects the candidates based on professional criteria for the 'prosecutor's training/education programme' *(Raio – Rechterlijke ambtenaar in opleiding)*. This is a six-year programme which an individual must complete successfully in order to become a public prosecutor. On the other hand, the legally-prescribed criteria to appoint a public prosecutor are scarce, and those listed represent a set of formal qualifications rather than clear professional criteria. Public prosecutors shall be Dutch citizens who have a master's degree in law. The law does prescribe which positions are incompatible with the office of public prosecutor; that is, governor, minister, member of a High Council of State, lawyer and notary.[624]

The procurator general can be suspended or dismissed by Kingdom Decree by the Council of Ministers of the Kingdom.[625] The advocate general[626] and the chief public prosecutor[627] can be suspended or dismissed by Kingdom Decree via the ministers of justice of the three countries. The other members of the Public Prosecutor's Office can be suspended or dismissed by the minister of justice of Curaçao at the recommendation of the procurator general.[628] They can only be suspended or dismissed on precisely specified grounds.[629] These limited grounds for suspension or dismissal prevent other parties, such as the Executive, from influencing the law enforcement by use of threat. Grounds for suspending or dismissing a public prosecutor include: proof that he/she is unfit for task, loss of Dutch nationality, detention, conviction for a crime, and bankruptcy. Because personnel of the Public Prosecutor's Office are civil servants, the suspension and dismissal procedures from the country ordinance Legal and material rights and obligations of civil servants are also applicable.[630]

The police forces (Police Force Curaçao and the special police force) and the Public Prosecutor's Office of Curaçao are the responsibility of the minister of justice of Curaçao. They have to account for their policy to the minister of justice. The four ministers of justice from the Kingdom do jointly propose policy programmes and accountability requirements, but each minister is responsible for the investigative activities in his own country. The procurator general exercises authority over criminal enforcement of the legal system by the Police Force Curaçao and the special police force.[631]

The powers of the police forces are anchored in the Kingdom Act Police and those of the Public Prosecutor's Office are anchored in the Constitution[632] and in the Kingdom Act Public Prosecutor's

[620] Country ordinance Legal and material rights and obligations of civil servants (*Landsverordening materieel ambtenarenrecht*), Official Curaçao Gazette 2010, Chapter II-III en Chapter IX.
[621] Ibid, Article 3.
[622] Kingdom Act Public Prosecutors Offices, 2010, No. 336, Article 16 and 17.
[623] Ibid, Article 17.3.
[624] Ibid, Article 18.3.
[625] Ibid Article 24.
[626] Ibid Article 16.1.
[627] Ibid Article17.2.
[628] Ibid, Article 17.3.
[629] Ibid, Article 20-25.
[630] Country ordinance Legal and material rights and obligations of civil servants, 2010, 87, Chapter IX.
[631] Kingdom Act Public Prosecutors Offices, 2010, No. 336, Article 9.
[632] Constitution, 2010, No. 86, Articles 105-108.

Office[633]. Since the constitutional and Kingdom Act provisions are strictly formulated, and an amendment requires consensus of all countries in the Kingdom involved, the possibilities of amending them are limited.

The minister of justice has a strong position in the system**.** This is not only because he may issue General Directives (*Algemene Aanwijzingen*)[634] to the office of the Prosecutor General about its prosecution policy. His position is especially strong because the minister of justice may also issue Specific Directives (*Bijzondere Aanwijzingen*),[635] although these do have to pass the Joint Court of Justice before they become valid. The Joint Court has to examine whether such a specific instruction is in accordance with the law (written and unwritten). Only after the intended instruction has passed this test may it be issued by the minister of justice. The minister of justice is not authorised to exercise his powers in individual cases.

Independence (practice)

Score: 50

TO WHAT EXTENT ARE LAW ENFORCEMENT AGENCIES INDEPENDENT IN PRACTICE?

Not all law enforcement agencies operate with a high degree of independence because they are under financial control of the government. Moreover, there have been some concerns about the inference of government in the dismissal of chiefs of police.The independency of the Public Prosecutor's Office has been called into question a few times, but there are no indications that the independence is at risk.

According to several experts from the law enforcement agencies (Police Force Curaçao and the special police force*)* they can't operate independently because 'their' budget remains at the discretion of the minster of justice.[636] In practice they remain highly dependent on the ministers of justice and finance to obtain sufficient resources to fulfill their needs.

Regarding appointments, in practice there have been several examples of chiefs of police who, after a change in government, were removed or transferred for unspecified reasons. The reasons for removing or transferring are not always clear. There have been several court cases in this respect.[637] There are, as far as could be determined in this assessment, no examples of public prosecutors being removed or transferred due to the content of their decisions. It is highly exceptional for public prosecutors to be removed before the end of their term. If public prosecutors are discredited because of their own conduct, they usually resign. Moreover, in practice it is quite difficult to suspend or dismiss a public prosecutor. This has both advantages and disadvantages. The independence is adequately safeguarded, but when somebody is not performing adequately it is also very difficult to dismiss or remove that person.

Several professionals expressed their serious concerns about the role of the procurator general together with the minister of justice.[638] They question whether a procurator general in such a small

[633] Kingdom Act Public Prosecutors Offices, 2010, No. 336, Articles 9-15.
[634] Ibid, Article 13.1.
[635] Ibid Article 13.2.
[636] Country ordinance Government accounts, 2010, 87, Article 39. Also: Annual report *Landsrecherche* 2012, Curacao April 2013, p.4.
[637] Dismissal Chief of Police Anthony Willems not fair, 22 August 2006, via www.korps-politie-suriname.com [accessed 6 March 2013]. See also: Casseres versus the government in court, 16 April 2011 via www.antiliaansdagblad.com [accessed 6 March. 2013].
[638] Jan M. Reijntjes, Curacao on the threshold of autonomy: the miners' strike of 1955: A private Procurator General for Curacao (*Curaçao op de drempel van de autonomie, de mijnstaking van 1955* of: *Een eigen PG voor Curaçao)* (Nijmegen: 2012), p 58.

country is able to keep sufficient distance from the political arena. According to others there are, in practice, sufficient safeguards in the Kingdom Act.[639]

In recent years, the independence of the Public Prosecutor's Office Curaçao has been called into question a few times. For example, in 2012 some members of the Parliament of Curaçao proposed a Parliamentary Enquiry into the research methods of the Public Prosecutor's Office Curaçao.[640] In the same period, an increase in the number of 'politically sensitive reports' was registered.[641] It has been suggested that cases reported by supporters of some political parties received more favourable treatment than those reported by supporters of other parties or by ordinary citizens. Because the Public Prosecutor's Office Curaçao aims to prevent any perception of impartially, it introduced an instruction regarding 'politically sensitive reports'.[642] A special commision with, amongst others, the advocate general and the head of the special police force, aims to achieve objective decisions according to criteria in the instruction. There are no indications of undue influence in the decisions of the commission.

Examples of undue external interference in judicial proceedings are rare, but in 2012 the minister of justice of Curaçao intervened in an on-going criminal investigation, the '*Bientu*-investigation'. Although strict rules apply to prevent interference in a criminal investigation,[643] on 25 April 2012 the minister of justice submitted an official request to the American minister of foreign affairs to lift the seizure of US bank balances of a Curaçao lottery owner, half-brother of the then minister of finance. Those seizures were made at the request of the Public Prosecutor's Office in Curaçao, who, until the minister of justice withdrew the delegation (mandate) of his authority to ask the United States for legal assistance, was the relevant authority to do so and had been for more than 20 years. The issue led to questions from the United States to the Dutch government and was eventually settled with a letter from the Dutch Minister of Foreign Affairs to the authorities in the United States, also on behalf of the Curaçao government, underscoring that all countries within the Kingdom of the Netherlands should respect the separation of powers.[644] As far as we could determine in this assessment, the mandate is still not returned to the procurator general and there are as yet no guarantees created to prevent recurrence.[645]

Another example of undue influence concerns the appointment of attorneys at law representing the State *(Landsadvocaat)*[646] in civil and other cases against the State. Since 1986 the advocate general had been authorised to select legal representatives to represent the State, to prevent conflicts of interest at the expense of the State and the State budget.[647] However, the first cabinet of Curaçao, Cabinet-Schotte (2010-2012) withdrew this authority from the advocate general, and became directly responsible for selection. Cabinet-Hodge broke some of the contracts concluded earlier, but as yet has not re-authorised the advocate general to select its legal representatives.

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[639] Kingdom Act Public Prosecutors Offices, Article 13.1 and 13.2.
[640] 'Proces parlementaire Questionnaire starts' (*Proces Parlementaire Enquête in gang gezet)*, Amigoe 15 May 2012. See also *Onduidelijkheid over parlementaire enquête* 25 May 2012 via www.versgeperst.com.
[641] For example, *Public Prosecutor's Office credibility is questioned* (*Geloofwaardigheid OM staat ter discussie, Van der Dijs doet aangifte tegen Leeflang*), Amigoe 21 April 2012, *Ivar Asjes doet aangifte*, Amigoe 30 Juni 2012.
[642] 'Commission for political reports' (*Commissie voor politiek gevoelige aangiften)* 18 November 2012 via www.versgeperst.com [accessed 15 February 2013].
[643] Kingdom Act Public Prosecutors Offices, 2010, No. 336, Articles 13.2. The Treaty between the US and the Kingdom says that the minister of justice is the central authority for mutual legal assistance requests. That had been mandated to the procurator general but such a mandate may be revoked, it did.
[644] http://knipselkrantCuraçao.wordpress.com (*Punt achter omstreden brief minister Wilsoe)* September 2012 [accessed 12 March 2013].
[645] Information Public Prosecutor's Office, 13 May 2013.
[646] Strictly speaking, there is no 'State Attorney'. The country selects a lawyer to act in a particular case on behalf of the country.
[647] As recommended in: Commission of experts, Assessment of government apparatus Curacao and Sint Maarten, 2012, p 29.

Although there is no public information about intimidation of police officers and public prosecutors, some of those interviewed in the course of this assessment did provide some examples of 'outside pressure' aimed at hindering prosecution.

Governance

Transparency (law)

Score: 25

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC CAN ACCESS THE RELEVANT INFORMATION ON LAW ENFORCEMENT AGENCY ACTIVITIES?

A few legal instruments are in place to ensure individual citizens' access to information on investigations and prosecutions but overall, transparency provisions are limited.

The Code of Criminal Procedure underlines the importance of confidentiality of data.[648] The importance of secrecy of information is also mentioned in the country ordinance Legal and material rights and obligations of civil servants.[649] The law does not require the law enforcement agencies to proactively release information. The Police Force Curaçao*,* the special police force and the procurator general are required to report annually on their activities to the minister of justice, but they are not obligated to make those reports available to the general public. Also, the procurator general is required to adopt rules of procedure, but is under no obligation to provide this information to the public.[650] In addition, the legal framework does not contain any provisions to proactively inform the public about some important aspects of the law enforcement agencies' activities, such as crime statistics, judicial statistics, appointments and dismissals. And although both codes of conduct of the police and the public prosecutor contain rules regarding financial interest, law enforcement officials do not need to disclose their assets.

On the other hand, the Code of Criminal Procedure guarantees the right of suspects and victims to access information relevant to their case. During the pre-trial phase, the suspect has the right to access his case file if it does not interfere with the investigation. Suspects or their legal advisors can request a copy of the final court decision and the statement. Victims have the right to access the relevant case file if this is not a hindrance for the investigation, the privacy of the investigation and prosecution of criminal offence or ponderous general interest. Third parties can also request a copy if this does not harm the interest of those who are involved in the case. In some cases, anonymised copies of case files can be provided.[651]

As far as we could determine in this assessment, the Freedom of Information Act (*Landsverordening Openbaarheid van Bestuur*) cannot be considered for information about investigation and prosecution.[652]

[648] Code of Criminal Procedure, 2010, No. 86-87, Article 45.
[649] Country ordinance Legal and material rights and obligations of civil servants 2010, No. 87, Article 44.
[650] State Gazette, 2010, 359, Kingdom Decree Regulations Public Prosecutor Article 3.
[651] Code of Criminal Procedure, Articles 51-54.
[652] Country ordinance Freedom of information Act (LOB), AB 2010, No. 87, Article 11.

Transparency (practice)

Score: 50

TO WHAT EXTENT IS THERE TRANSPARENCY IN THE ACTIVITIES AND DECISION-MAKING PROCESSES OF LAW ENFORCEMENT AGENCIES IN PRACTICE?

Although law enforcement agencies do inform the public about criminality, they are less transparent about their procedures and policies. On the other hand, the openness of the Public Prosecutor's Office regarding its organisation and management is increasing.

The police do inform the public about criminality, as long it does not interfere with the investigation. The police press officer communicates daily via radio and television about cases and developments in on-going investigations. Relevant information is shared, as far as it does not harm investigations. In addition, several newspapers also report on police activities, partly based on information provided to the police radio.

On the other hand, as for the Police Force Curaçao, it is certainly not the case that the general public has easy access to information on the organisation and functioning of the police forces. For example, it is not easy for crime victims to find out how and where they can file a report. There is no website, nor a Facebook page or other easy means of access. Accessibility by phone is not always guaranteed.

On the positive side, the public can readily obtain basic relevant information on the organisation and functioning of the Public Prosecutor's Office. The Office has a website, which was launched in February 2013. This contains a broad range of information on, for example, the structure of the Public Prosecutor's Office, information about the offices in the different countries of the Kingdom, publications and news.[653] The Office also has a Facebook page to keep the public informed of recent cases and verdicts, and this also provides for a low threshold to contact the Public Prosecutor. Another positive development to be mentioned is the proactive attitude of the spokesman of the Public Prosecutor's Office. Moreover, in 2013 the Public Prosecutor's Office organised training for journalists to inform them about the Penal Code, and the procedures and specific role of the Office.[654]

The annual report of the Public Prosecutor's Office contains information on operational management, statistics on reports, type of cases and verdicts. Unfortunately the annual report so far has never been ready within the prescribed timeframe (April of the following year). According to those interviewed, the annual report of 2011 is still not approved by the ministers of justice, while this is required by the Kingdom Act.[655] The reports are available for those interested, but are not (yet) published on the Office's Facebook page or its website. The 2011 annual report of the Public Prosecutor's Office can, however, be found on internet sites. The Public Prosecutor's Office usually also makes public through different media information on judicial appointments, dismissals and transfers.

In recent years, two analyses about the crime situation in Curaçao were published.[656] These contain both quantitative and qualitative information about several crimes, and are available for those

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[653] See www.openbaarministerie.org [accessed 11 March 2013].
[654] Training journalists Public Prosecutor's Office Curaçao, (*Geslaagde 'opfriscursus' OM journalisten Curacao*), 4 June 2013, via www.dutchcaribbeanlegalportal.com.
[655] Kingdom Act Public Prosecutors Offices, 2010, No. 336, Article 31.
[656] W. Faber et al, Baseline study, Criminality and law enforcement Curaçao and Bonaire (*Baselinestudy. Criminaliteit en rechtshandhaving Curaçao en Bonaire*) (Oss/Amsterdam: Faber Organisatievernieuwing BV/Vrije Universiteit Amsterdam, June 2007) and KLPD, Crime analyses of Curaçao 2008 (*Criminaliteitsbeeld analyse van Curaçao 2008)* (Zoetermeer: Korps Landelijke Politiediensten, Dienst IPOL, 2009).

interested. The progress reports of the ‘Implementation Plan Police Force Curaçao’ can also be found on the internet.[657]

Accountability (law)

Score: 75

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT LAW ENFORCEMENT AGENCIES HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS?

Law enforcement agencies are required by law to give reasons for their actions. The legal framework contains a variety of provisions regarding complaints and disciplinary sanctions against police officers and public prosecutors.

The Kingdom Act Police requires every country to have a law with a complaints procedure regarding the behaviour of police officers.[658] To file a formal complaint about the behaviour of a member of the Public Prosecutor’s Office, the procedure described in the Kingdom Decree Regulations Public Prosecutor applies. Complaints about the procurator general are dealt with by ‘the three ministers of justice’. Complaints about the other members of the Public Prosecutor’s Office are dealt with by the procurator general.[659] Although the ministers and/or procurator general may install a ‘complaints advisory body’, with at least one member of which is to be an outsider, there is no independent body investigating complaints against public prosecutors. At the same time, the minister of justice is politically responsible for the conduct and performance of the public prosecutor. He may be called upon to render account to Parliament.

The procurator general reviews the conduct of the police services[660] and the law requires public prosecutors to give reasons for their actions. Interested parties, other than those prosecuted, may also complain against a juridical decision, for example, in case of a decision not to prosecute (promptly), or not to continue to prosecute (Article 15 procedure).[661] The Court of Appeal will hear the person who filed the complaint and can also hear the persons who are not prosecuted in order to allow them to comment on the complaint. The Court of Appeal can order the prosecution of the criminal offence or refuse such an order on grounds of general interest.[662]

Citizens can also file a formal complaint regarding the police and public prosecutor at the Ombudsman. There are, however, no laws which provide for measures to protect the complainants.

Law enforcement officers and public prosecutors are not immune to prosecution for corruption and other criminal offences. A variety of disciplinary sanctions can be imposed on police officers[663] and public prosecutors[664] ranging from warning and reprimand to demotion and dismissal. In addition, the rules for civil servants on disciplinary sanctions, demotion and dismissal apply to police officers and public prosecutors.[665]

[657] ‘Acting and implementation plan’ (*Uitvoeringsrapportage en implementatieplan Korps Politie Curacao)* via www.rijksoverheid.nl [accessed 5 May 2013].
[658] Kingdom Act Police, 2010, No. 337, Article 43.
[659] Kingdom Decree Regulations legal position Public Prosecutor, 2010, No. 336, Article 35-46.
[660] Constitution, 2010, No. 86, Article 107.1-2.
[661] Country ordinance, 5 November 1996, Code of Criminal Procedure, Article 15, A.B. No.86 and 87.
[662] Code of Criminal Procedure, 2010, No. 86-87. Article 25.1 and 25.2.
[663] Legal position Police, *Rechtspositie Besluit Politie.*
[664] Kingdom Decree Regulations Public Prosecutor, 2010, No. 336, Article 28-31.
[665] Country ordinance, Country ordinance Legal and material rights and obligations of civil servants, Chapter VIII and IX.

Accountability (practice)

Score: 50

TO WHAT EXTENT DO LAW ENFORCEMENT AGENCIES HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS IN PRACTICE?

Accountability of law enforcement officers is not ensured adequately in practice. The status of complaints procedures for the police is unclear and the right of victims to receive information about the follow up of 'their' case is not always respected. The existing provisions are not effective in practice.

According to those interviewed, at the time of writing of this report, the country ordinance Complaints committee policing actions (*Landsverordening Klachtencommissie Politieel Optreden*) from the Netherlands Antilles[666] is still used. We could not confirm in this assessment if a new complaints ordinance for Curaçao is in the making.[667] We couldn't determine whether a complaints procedure already exists for the Police Force Curaçao, while the special police force stated it does not yet have a complaints procedure.

The Law Enforcement Council has stressed the importance of the introduction of a complaints procedure regarding the reporting process, to get a better idea of the needs of citizens and the performance of the police.[668] In addition, according to the Law Enforcement Council, the requirement to inform those who reported a case (and have indicated that they want to be informed about its follow up) is often not followed by regular police forces, that is, district teams.[669] According to research into the police organisation, conducted in 2008, law enforcement agencies do have several procedures to report and be answerable for some actions, but the existing provisions are not always applied effectively in practice.[670]

On the positive side, public prosecutors do give reasons for their actions and decisions in practice. However, according to one expert, if the reasons for the actions and decisions of the public prosecutors are poor and not well sustained, there are often no consequences. As noted above, complaints can be submitted to the Public Prosecutor's Office, but procedures are often not known by the public. According to those interviewed, the Public Prosecutor's Office has not received any official complaints since the change in the constitutional relations. To date, no complaints advisory bodies have been installed. Citizens have, however, filed a few complaints regarding the police with the Ombudsman. In 2010 the Ombudsman received three complaints about the police[671] and six in 2011[672]. The Court of Appeal receives about 10 complaints of non-prosecution a year[673] and has by law the authority to give instruction to the Public Prosecutor for further prosecution. Those complaints generally do not apply to corruption cases.

[666] Country ordinance, 1994, compliant procedure *(Procedurehoudende instelling van een klachtencommissie met betrekking tot het optreden van politieambtenaren).*
[667] Implementation plan KPC, Intake & Service p.20
[668] Law Enforcement Council, *The reporting process on Curaçao*, Inspection report of the Law Enforcement Council, May 2012, p.10.
[669] Ibid, p.7.
[670] Now or Never, Police Netherlands Antilles, (*Nu of Nooit, Naar een verbeterplan voor de politiekorpsen op de Nederlandse Antillen*), Rotterdam, March 2008.
[671] Annual Report Ombudsman 2010, p.22.
[672] Annual Report Ombudsman 2011, p.16.
[673] Country ordinance, Code of Criminal Procedure, 2010, No. 86 and 87, Article 15.

Integrity (law)

Score: 75

TO WHAT EXTENT IS THE INTEGRITY OF LAW ENFORCEMENT AGENCIES ENSURED BY LAW?

There are extensive regulations to ensure the integrity of the members of the law enforcement agencies. Examples are a code of conduct, rules regarding additional functions and rules on gifts. There are, however, no rules on post-employment restrictions.

The Kingdom Act Police requires the police force to define an integrity policy and draft a code of conduct.[674] The integrity policy should pay attention to increasing integrity awareness and preventing the abuse of power, conflict of interest and discrimination. This should be part of the police's human resource policy: integrity should be addressed in regular function evaluation talks and work meetings and by offering education and training about integrity.[675]

The law also prescribes a code of conduct for the members of the Public Prosecutor's Office.[676] The code seeks to provide rules for behaviour regarding efficiency, impartiality, communication, independence, professionalism, respect and fairness. The rules concern the relation between the employees of the Public Prosecutor's Office and judges, suspects, lawyers, ministers, public administration, police, society, media, and international relations. The rules do not stipulate which specific types of behaviour are prohibited, but instead describe 'model behaviour'. There are no specific rules in the code of conduct on financial compensation for additional functions and activities, except for a rule which says that permission has to be given by the procurator general.

In addition, police officers and public prosecutors have to abide by the integrity rules for civil servants[677] as far as these are not covered by the Legal Position Decree Police (*RPB – Rechtspositie Besluit Politie*). The law prescribes how to act as a 'good civil servant' and provides rules regarding additional functions, gifts, confidential information, compensation and honoraria, and public expenses. It is, for example, prohibited for civil servants to accept money, gifts and services, unless authorised by the competent authority.[678] The procurator general is required to keep a register of the additional functions and activities of the public prosecutors. The register has to be made available for perusal at the *Parket PG* and the Public Prosecutor's Office.[679] A civil servant is also obliged to inform the competent authority on his additional functions.[680] There is no obligation to disclose financial or business interests.

Employees of the police force and Public Prosecutor's Office are required to take an oath or pledge when they are appointed. There is a rule in the oath and pledge which governs gifts, hospitality and confidential information.[681] There are no rules monitoring whether these pledges are adhered to.

There are no rules for police force employees and public prosecutors to disclose assets. The law does not stipulate which specific types of behaviour are prohibited. There are no restrictions for police force employees and public prosecutors entering the private or public sector after leaving office.

674 Kingdom Decree Regulations Public Prosecutor, 2010, No. 336, Article 45.
675 Ibid, Article 45.2.
676 Ibid, Article 3.
677 Country ordinance Legal and material rights and obligations of civil servants, 2010, No.87.
678 Kingdom Decree Regulations Public Prosecutor, 2010, Art. 59.
679 Ibid., Article 18.7
680 Ibid., Article 51.
681 Ibid., Article 58 and 62.

Integrity (practice)

Score: 50

TO WHAT EXTENT IS THE INTEGRITY OF MEMBERS OF LAW ENFORCEMENT AGENCIES ENSURED IN PRACTICE?

The integrity rules for law enforcement officers are numerous and can become confusing. The police forces and the Public Prosecutor's Office did undertake some activities to ensure its integrity. The Public Prosecutor's Office investigates and santions integrity breaches. Due to lack of information about the Police Force Curaçao we couldn't determine its practice on integrity.

In practice, the Police Force Curaçao indicates that it has a code of conduct and pays attention to integrity issues, for instance by organising training. The Training Institute for Law Enforcement and Safety Concerns (*Opleidingsinstituut voor Rechtshandhaving en Veiligheidszorg*) provided training on the code of conduct and integrity for members of the judicial chain in April 2011.[682] Furthermore, in 2010 workshops for managing integrity were provided for managers. However, due to a lack of sufficient information in this assessment about the integrity policy of the Police Force Curaçao, we couldn't determine if, for instance, the code of conduct is applied in practice.

Experts from outside the Public Prosecutor's Office have the impression that, overall, public prosecutors are highly professional, very thoughtful/careful and ethically aware. However, the independence and integrity of public prosecutors has also come under scrutiny in recent years. The fact that there are no regulations restricting post-government private sector employment for public prosecutors recently gave rise to some integrity concerns when a former public prosecutor, employed for more than 10 years at the Office in Curaçao, became an attorney at law in the private sector immediately after his retirement from office.

The additional functions and activities of public prosecutors are registered in practice, but their accessibility for perusal at the *Parket PG* and the Public Prosecutor's Office was not confirmed during this assessment.

The Public Prosecutor's Office introduced a code of conduct in 2010 and organised training on the introduction of the code. Breaches of the code are investigated and sanctioned, and the self-regulating mechanism is considered to work well. On the downside, because the rules regarding integrity, as found in the Kingdom Act and those relevant to civil servants, as well as those in the code of conduct apply to the public prosecutor, it is complicated and confusing to handle integrity issues in practice.

Although those to be employed at the police and the Public Prosecutor's Office are to take an oath/pledge, in practice, this is not always the case.

[682] See also: Caribbean Action Taskforce (CFATF), Mutual evaluation report Curaçao, 25 June 2012.

Role

Corruption prosecution

Score: 50

TO WHAT EXTENT DO LAW ENFORCEMENT AGENCIES DETECT AND INVESTIGATE CORRUPTION CASES IN THE COUNTRY?

Law enforcement agencies do investigate corruption cases, but cases are complicated and time-consuming. Insufficient financial and human resources (expertise) and institutional mistrust have a negative effect on the detection and investigation of corruption cases in Curaçao.

The police forces and the Public Prosecutors's Office have adequate powers to apply proper investigative techniques. For some investigative techniques, permission from the court is required, for example to undertake house-searches or telephone-tapping. Unfortunately, an important law on special investigative authorities for law enforcement (*Wet Bijzondere Opsporings Bevoegdheden*) waited a long time (since 2008) for approval.[683] Finally in December 2012 the law was approved.

Corruption legislation is built around a few provisions in the Penal Code.[684] The procurator general has discretionary powers to decide whether or not to investigate. His decision to investigate depends on, amongst other things, whether or not the criminal information is sufficient 'to build a case' (*brengzaken)*. In practice, however, parties involved in a corrupt act have an interest in keeping their activities secret, which necessitates a proactive approach to tackle corruption. In addition, the procurator general may also decide to instigate an investigation on his own initiative (*haalzaken*).

In practice there are several hurdles to investigate corruption. In the first place, corruption cases are complicated to investigate and require special expertise of police officers and public prosecutors. As noted above, police expertise in the field of fraud and corruption is scarce, and also the Public Prosecutor's Office does experience difficulties in attracting public prosecutors with knowledge and experience in this special field. Secondly, to investigate corruption is time-consuming. Corruption is difficult to prove and is often accompanied by other crimes which are easier to prove. Moreover, there are a lot of other crimes which need attention, and as mentioned before, the police forces lack financial and human resources to fulfil all their tasks. Thirdly, in addition to professional expertise and sufficient time, the determination and will to investigate (politically) sensitive cases are necessary conditions to tackle corruption. According to some interviewees (although it is difficult to determine whether this is the case), the prosecution track record indicates fear of being accused of political partiality. Moreover, the public prosecutor's commitment to fight corruption depends largely on prosecutions instigated by the police. On top of that, according to several interviewees, there tends to be institutional mistrust in Curaçao between law enforcement officials within an agency and also with other law enforcement agencies. The exchange of criminal intelligence is often not a two-way process. In many cases information is exchanged only if the person at the other end of the line is known personally. This problem appears to be magnified in the Caribbean because of the small size of the islands.[685] This lack of trust hinders the cooperation between different forces, and has a negative effect on the detection and investigation of corruption cases in Curaçao.

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[683] Letter president of the Bar Association Curacao, regarding Country Ordinance BOB, 22 March 2012, www.ordevanadvocaten.an [accessed 16 February 2013].
[684] Penal Code, 2011, No. 48, Articles 1:128-130, Articles 2:312-313, Articles 2:350-351.

[685] United Nations, International Narcotics Control Board, 2010.

There is no overview available which shows the total number and type of investigations carried out. There are no regular and comprehensive statistics on criminal corruption cases, and the annual reports of the Public Prosecutor's Office[686] do not provide an insight into the number of corruption convictions. The registration of corruption requires additional administrative steps to be taken; these offences are currently registered under a more general category of crime.

The special police force registered 16 investigations into integrity issues of civil servants in 2012, of which only one was a bribery case.[687] It is believed that not all cases of bribery are reported to the police or the Public Prosecutor's Office. Although there is a legal duty[688] for civil servants to report immediately a crime they become aware of while carrying out their job, in practice this is rarely done.

Those interviewed in this assessment considered the total number of corruption cases and convictions to be low. Preliminary findings of an academic study show about 10 corruption cases under appeal between 2008 and 2011 in Curaçao.[689] (See also Chapter V. Corruption Profile.)

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[686] Annual report 2011, Public Prosecutor's Office.
[687] Annual report *Landsrecherche*, 2012, p.9.
[688] Country ordinance Legal and material rights and obligations of civil servants, Article 86.
[689] P.C.M. Schotborgh-van de Ven, PhD study in process, The causes of fraud and corruption in the Dutch Caribbean.

VII.6 ELECTORAL MANAGEMENT BODY

STRUCTURE AND ORGANISATION

Curaçao's electoral management body is the Supreme Electoral Council, (HSB – *Hoofdstembureau* (referred to below as the electoral council). Its formation rules, powers and responsibilities are detailed in the Electoral Code and, with respect to political party financing, in the country ordinance Finances of political groups.[690] The electoral council is composed of five members, including a chair and substitute chair, appointed by the minister of administration, planning and service (*bestuur, planning en dienstverlening) (*referred to below as the minister).[691] Curaçao is divided into electoral districts, the number of which is determined by the government. Each electoral district has a polling station (*stembureau*), which consists of three members, including a chairperson. Its members are also appointed by the minister. Members of the supporting stations (*ondersteuningsbureaus)* – broadly speaking, stations to support the electoral participation of political parties not yet represented in Parliament – are also appointed by the minister.[692]

ASSESSMENT

Capacity

Resources (practice)

Score: 75

TO WHAT EXTENT DOES THE ELECTORAL MANAGEMENT BODY HAVE ADEQUATE RESOURCES TO ACHIEVE ITS GOALS IN PRACTICE?

The electoral council has adequate resources to perform its tasks in the organisation of elections and referenda, but its dependence on the administration makes its resource base vulnerable. It does not receive additional resources to carry out its tasks related to the financing of political parties.

There are no specific regulations in the Electoral Code or other ordinances to provide the electoral council with a sufficient budget. Although the explanatory memorandum of the Electoral Code does mention that the minister is responsible for the adequate funding of the preparation and organisation of elections, there are no concrete legal provisions in the code to enforce this. The ordinance on political party financing does not contain any provisions on how to cover the costs involved with the

[690] Country ordinance Electoral Code Curaçao (*Landsverordening Kiesreglement Curaçao*) (below: Electoral Code), Official Curaçao Gazette 2010, No.87, Appendix d; Country ordinance Finances political groups (*Landsverordening Financiën politieke groeperingen*), Official Curaçao Gazette 2010, No.87, Appendix l.

[691] In practice the Supreme Electoral Council also has substitute members, although the new ordinance does not explicitly mention them (cf. Electoral Code, Article 13 and www.kse.cw.

[692] Electoral Code, Articles 13, 17,18, 38-40.

electoral council's tasks as supervisor of political party financing. However, the Electoral Code does require the minister to cover some of the electoral council's costs. For instance, the minister provides the electoral council with an office in which to convene.[693] (Also refer to the section on Independence.)

In practice, during the last elections of October 2012, the electoral council was responsible for the full budget for the administration of the elections, made available by the minister on the basis of a draft budget handed in by the electoral council. This budget covered expenses related to communication, security, mailing of voter registration cards, voting ballots and financial compensation for members of the polling stations.[694] The budget was considered to be sufficient to perform the electoral council's tasks during the last election. The electoral council is not provided with additional budget required to perform its tasks related to the financing of political parties.

Regular personnel costs are not included in the budget made available, and the electoral council is to make use of the services provided by several administrative bodies, such as the Civil Registry (*Kranshi*), and, with respect to the monitoring of the financing of political parties, the administration's internal auditor (*SOAB – Stichting Overheidsaccountantsbureau)*. Members of the electoral council themselves do not receive any remuneration for their work nor reimbursement of expenses, and they regard their work as 'an honourable activity to serve the country'.[695] However, the electoral council is allowed to contract additional personnel when needed, such as catering staff or additional security.

Up to now these arrangements are considered to have been sufficient for the electoral council to perform its tasks adequately, although the lack of reimbursement of expenses of its members implies that, in practice, members themselves cover part of the costs involved. Moreover, international observers considered positively the quality of the Civil Registry, and reported that officers and members of the polling stations were well acquainted with their respective tasks.[696]

Independence (law)

Score: 25

TO WHAT EXTENT IS THE ELECTORAL MANAGEMENT BODY INDEPENDENT BY LAW?

The Electoral Code contains insufficient safeguards for the independence and impartiality of the electoral council, although it does clearly define its powers.

The position of the electoral council is not anchored in the Constitution, but in the Electoral Code, which can be amended only with the approval of both Parliament and government. This Code also defines the respective responsibilities of the government and the minister in the system of electoral administration.[697]

Pursuant to the Electoral Code, the government is responsible for the division of Curaçao into electoral districts, the designation of premises for the supporting of lists of candidates, the drafting and set up of several forms, as well as for regulations related to the decision-making of the electoral

[693] Ibid., Articles 13, 41, 48, 54.
[694] Cf. Electoral Decree Curaçao (*Kiesbesluit Curaçao*), Country Gazette 2012, No.56, general part of the explanatory memorandum, under 'Financial consequences' (*Financiële consequenties*).
[695] www.kse.cw [accessed 1 March 2013].
[696] 'Report of the international observers, Parliament elections held on Friday October 19, 2012, in Curaçao' via www.kse.cw [accessed 3 March 2013]. Also Commission of experts, Assessment of government apparatus Curaçao and Sint Maarten (*Toetsing overheidsheidsapparaten Curaçao en Sint Maarten*) (s.l.: Commission of experts, May 2010), p.49.
[697] Constitution of Curaçao (*Staatsregeling van Curaçao*), Official Curaçao Gazette 2010, No.86, Article 38. Cf. Electoral Decree, general part of explanatory memorandum.

council.[698] The minister is responsible for the quality of the electoral register, the appointment, suspension and dismissal of electoral council members, and the appointment of members of the supporting and polling stations (also see below). The minister is also to provide the electoral council with an office, send out voter registration cards, designate the premises for the polling stations and provide for the establishment of the polling stations and the ballot papers. In case the voting process needs to be suspended, the minister is to safeguard the ballot box and ballot papers.[699] The electoral council, in turn, is responsible for the assessment of and decision on the validity of the lists of candidates handed in, the numbering of the lists of candidates and other related issues, as well as the determination and reporting of the electoral results.[700]

This detailed division of responsibilities implies a clear division of powers which, in a sense, supports the electoral council's independent position. However, it also implies that the effectiveness of its work is to a large extent dependent on actions of others. And although in 2010 a commission of experts recommended that the organisation of the elections should be shielded from any form of political interference, many elements which are typically administrative still are the responsibility of the minister.[701] Moreover, importantly, other than this clear division of responsibilities, the Electoral Code does not provide any safeguards for the electoral council's independence; nor do any other regulations. Before the change in constitutional relations, the chairman of the electoral council was to be the Lieutenant Governor (*Gezaghebber),* appointed by the Crown. Today, the appointment, suspension and dismissal of members of the electoral council are at the minister's discretion. Combined with the provision that the minister is to appoint the members of the electoral council each time at least 30 days before nomination day (*dag der kandidaatstelling*), the current legal framework thus provides the outgoing cabinet the opportunity to leave its mark on the electoral council's composition.[702] It also burdens the appointed members with at least the perception of a conflict of interest. Furthermore, although the abovementioned commission recommended that the appointment procedures of electoral council members needed to include more safeguards 'to ensure the independence, integrity and impartiality' of the electoral council, as yet the law has not been adapted to ensure this.[703]

Also, although the explanatory memorandum refers to the need for candidates who are 'able and upright', there are no requirements in the Electoral Code or elsewhere to ensure recruitment is based on clear professional, non-discriminatory criteria. There are also no restrictions on party membership. Similarly, the law does not specify any reasons for suspension or dismissal, making members of the electoral council vulnerable to removal without relevant justifications.[704] In similar ways, the above is true for members of the supporting and polling stations.

Independence (practice)

Score: 100

TO WHAT EXTENT DOES THE ELECTORAL MANAGEMENT BODY FUNCTION INDEPENDENTLY IN PRACTICE?

The independence of the electoral council was not called into question during the last election, and the minister mandated several of his responsibilities to further allow the council to operate independently.

698 Cf. Electoral Decree and the relevant articles of the Electoral Code mentioned in that decree.
699 Ibid., Articles 41, 48, 54 and 73.
700 Ibid., Article 13 and the explanatory memorandum.
701 Commission of experts, 2010:45.
702 Electoral Code, Article 13.
703 Also refer to Commission of experts, 2010:49.
704 Electoral Code, explanatory memorandum, under 'Principles of the draft' (*Uitgangspunten van het ontwerp*) and 'Articles 5 to 12'.

The composition of the electoral council appointed by the outgoing government prior to the elections of October 2012 was widely considered to be balanced. Other than the chairperson, who was approached by the minister of administration, planning and service, its members were selected by the chair himself, taking into account selection criteria such as expertise in legal, technical and financial aspects as well as integrity and impartiality.

The electoral council is also considered to have operated in a professional and non-partisan manner. Thus, for example, it underscored its non-partisanship in its public presentations, stating it 'would not talk about political parties, but [only] on the organisation [of the electoral process] before, during and after elections'. Members of the electoral council were not allowed to appear in public with any kind of party symbol, and wore uniform shirts on election day. There are also no reports of members making partisan statements or engaging in partisan activities.[705]

Also, prior to the elections of October 2012, the interim minister of the then interim government responsible for the elections mandated the electoral council to send out voter registration cards and provide for the establishment of polling stations and ballot papers. It was also mandated to ensure the safekeeping of ballot boxes and papers in case of suspension of the voting process.[706] In his statement, the minister underscored his intention to enable the electoral council to operate as independently as possible, and 'to minimize all possible intentions from the administration to have anything to do with the whole electoral process'.[707] In practice, this implied that the electoral council was responsible for the whole electoral process, including the selection and training of members of the supporting and polling stations. There were no reports of undue interference in the activities of the electoral council and the stations.[708]

Governance

Transparency (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC CAN OBTAIN RELEVANT INFORMATION ON THE ACTIVITIES AND DECISION-MAKING PROCESSES OF THE ELECTORAL MANAGEMENT BODY?

The Electoral Code contains many provisions to ensure public access to the activities and the decision-making processes of the electoral council, although transparency could be increased if all formal reports were required to be made public. There are, however, no provisions for transparency of the electoral council's work related to the financing of political groups.

The Electoral Code contains several important provisions to make public information on the activities and decisions of the electoral council. Thus, of course, it is required to officially publish its formal statement of all candidates elected as well as its decree on the election results. The electoral council has to deposit these documents at the Civil Registry for public inspection and announce these deposits publicly. The announcement of the final election results is also open to voters.[709] The

[705] See for example 'Information session Electoral Management Board' (*Informatieavond Hoofdstembureau*), 12 October 2012 via www.versgeperst.com [accessed 6 March 2013].
[706] Ministerial Decree of 16 October 2012 of the minister of administration, planning and service, no. 2012/62264. Cf. Electoral Code, Articles 41, 48, 54 and 73.
[707] 'Government interference elections minimized' (*Overheidsbemoeienis verkiezingen geminimaliseerd*), 16 October 2012 via www.versgeperst.com [accessed 6 March 2013].
[708] www.kse.cw [accessed 6 March 2013].
[709] Electoral Code, Articles 93, 104 and 105.

electoral council does not have to publish the final validated lists of candidates, but it does have to deposit those as well at the Civil Registry, and announce these deposits publicly.[710]

In addition the Electoral Code specifies that several of the electoral council's meetings are to be open to voters, such as its meetings deciding on the validity of the lists of candidates, on the numbering of lists, and on the determination of the number of total votes and votes per candidate cast.[711] The counting of votes is similarly open to voters.[712] The dates of these meetings either follow directly from the law or are required to be publicly announced.[713] However, although the electoral council or the members of the supporting and polling stations are required to formally report on these meetings (*processen-verbaal*), these reports are not explicitly required to be made public. The exception is the electoral council's formal report on the meeting in which it determines, possibly after recounts, the election results. The report on this meeting is required to be deposited at the Civil Registry for public inspection.[714]

Other meetings specified in the Code are not required to be open to the public, such as the electoral council's meeting on the assessment of the validity of lists of candidates. And although the Code does require the electoral council to formally report on those meetings, these reports are generally also not required to be made public.[715]

The ordinance regulating the financing of political groups does not contain any reporting requirements for the electoral council, and requires it to keep secret confidential information unless legally otherwise provided.[716] (Also refer to Chapter VII.10 Political Parties.)

Transparency (practice)

Score: 50

TO WHAT EXTENT ARE REPORTS AND DECISIONS OF THE ELECTORAL MANAGEMENT BODY MADE PUBLIC IN PRACTICE?

The public can readily obtain relevant information on the electoral council as far as it concerns the electoral process, although some additions to its website could further improve transparency. However, information on the electoral council's activities related to the financing of political parties is not made publicly available.

In practice, in the course of the last election, the electoral council did make all of the required information public via its website. Also, all meetings required to be open to voters were indeed open and reported to be publicly announced in advance. In addition, the electoral council organised several information sessions for the general public which were announced at supermarkets, and provided additional information through 'infomercials' on television, radio interviews and several press statements.

The electoral council also has an accessible public website.[717] This contains information about how it is organised and includes references to some – but not all – relevant legislation related to the electoral process.[718] It contains answers to frequently-asked questions, such as 'I did not receive my

[710] Ibid., Article 34. Also refer to Article 26.
[711] Ibid., Articles 27, 33, 86.
[712] Ibid., Article 68.
[713] Ibid., Articles 27 and 33, Article 86.
[714] Ibid., See, for example, Articles 21, 35, 84, 90 and 91.
[715] Ibid., Articles 25, 27 and 35. But see Article 93.
[716] Country ordinance Finances political groups, Article 20.
[717] www.kse.cw.
[718] The website provides access to the Electoral Code and a Ministerial Decree on the colours for political parties to choose from. It does not provide access to the Electoral Decree nor to the Ministerial Decree in which the minister delegated some of his responsibilities, via www.ksw.cw [accessed 20 May 2013].

voter registration card. How and where can I get it in time?' and information on how to cast a valid vote. It also provides some statistical information on those eligible to vote as well as detailed results of the last elections of October 2012, including the report of the international observers. In addition, the website contains results of previous elections and referenda, going back to 1993.

However, the website does not provide access to any of the formal reports, such as the reports required to be deposited at the Civil Registry. It also does not contain any information on its activities related to the financing of political groups. As far as could be assessed, the electoral council does not make such information available through other means.

Accountability (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE ELECTORAL MANAGEMENT BOARD HAS TO REPORT AND BE ANSWERABLE FOR ITS ACTIONS?

The Electoral Code contains several provisions to hold the electoral council accountable for its actions related to the electoral process, although it is not required to present a comprehensive report once the elections are over. Legal redress is also possible. There are, however, no requirements to hold the electoral council accountable for the execution of its tasks related to the financing of political groups.

The electoral council and the supporting/polling stations must, as already mentioned in the above, formally report on all their meetings required to be held by law (*processen-verbaal*).[719] In some cases, objections put forward by voters are also to be included in the reports, such as in the reports on of the supporting and polling stations on supporting and election day, or in the electoral council's reports on its meetings to determine and report the election results.[720] The latter, as well as the reports of the polling stations, are also required to be sent to Parliament, together with the electoral council's formal statement of all candidates chosen as well as its decree on the election results.[721] However, no time frame is specified for the submission of the reports, and the electoral council is not required to submit a comprehensive report or evaluation of the electoral process after the elections.

The Electoral Code does not contain any other requirements as to the contents of the formal reports, but their precise formats are prescribed in detail in the Electoral Decree.

Legal redress is also provided for. Appeal – again, by *voters* – against a decision of the electoral council prior to the elections may concern, for example, its assessment regarding whether or not a list of candidates satisfies all requirements to enter an election. Proceedings are to be instituted before the Court of First Instance. Appeal against the decision of that court is not possible.[722] The Electoral Code does not contain specific provisions to appeal its decisions related to the outcome of the election. However, such appeal is possible. Because decisions of the electoral council and the supporting and polling stations are not considered administrative law, these proceedings are to be based on the Civil Code.[723] Note also that the Electoral Code allows for the possibility of recounts prior to legal proceedings. Thus, the electoral council can decide – on its own initiative but also in response to a voter request – to conduct a recount of votes for one or more polling stations.[724]

[719] Electoral Code, Articles 25, 27, 33, 46, 84, 90 and 104. Also Articles 91 and 93.
[720] See, for example, Electoral Code, Articles 21, 68, 81 and 82 as well as Articles 89 and 104.
[721] Ibid., Article 106. The reports of the supporting stations are not required to be sent to parliament.
[722] Ibid., Articles 30 to 32.
[723] Ibid., explanatory memorandum to Articles 86 to 106. Cf. Country ordinance Administrative law (*Landsverordening Administratieve rechtspraak*), Country Gazette 2006, No.71, Article 2.
[724] Electoral Code, Article 88.

The country ordinance on the financing of political groups does not contain any provision which requires the electoral council to account for its activities, or to otherwise ensure that it is answerable for its actions in relation to political party financing.

Accountability (practice)

Score: 50

TO WHAT EXTENT DOES THE ELECTORAL MANAGEMENT BODY HAVE TO REPORT AND BE ANSWERABLE FOR ITS ACTIONS IN PRACTICE?

Parliament did not receive the electoral council's formal reports, but the council is reported to present an annual report to the minister of administration, planning and service. Redress for irregularities during the electoral process appears sufficiently provided for. The electoral council does not report on its activities related to the financing of political parties.

The electoral council, the supporting stations and the polling stations do formally report on their meetings as legally required. However, when asked, parliament informed Transparency International it had not received information mentioned in the above. On the other hand, the electoral council is reported to present a report on its activities related to the electoral process to the minister, although this could not be independently established.

The electoral council is not required and does not report on activities related to the financing of political parties.

Redress for electoral irregularities as provided for during the election process has been regularly sought, both in the most recent elections and in earlier elections. When it is, it is reported to be addressed by the electoral council. Thus, for example, during the last election, according to one political observer who was monitoring the electoral process in a voting station, there were some irregularities when counting voting ballots which were declared invalid.[725] The electoral council recounted those, monitored by the press and legal representatives of most political parties present. Legal redress is also sought in almost every election. This is usually related to the council's decisions not to admit candidates for election because the lists handed in did not satisfy all requirements, and because they were, for example, not handed in within the required time frame or with the necessary statements. Up to now, court rulings have never overruled the electoral council's decisions.[726] As far as could be ascertained, there have been no instances in which election results, once determined, were challenged in legal proceedings.

Integrity mechanisms (law)

Score: 50

TO WHAT EXTENT ARE THERE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF THE ELECTORAL MANAGEMENT BODY?

While integrity rules for civil servants involved in the electoral process are in place, there are hardly any provisions to ensure the integrity of members of the electoral council or members of the supporting and polling stations.

[725] See, for example, 'Lawyer Pieter casts doubts on invalid ballots' (*Advocaat Pieter trekt ongeldige stembiljetten in twijfel*), 24 October 2012 via www.versgeperst.com [accessed 4 June 2013].
[726] Also refer to L.J.J. Rogier, Principles of Caribbean Constitutional Law (*Beginselen van Caribisch Staatsrecht*) (Den Haag: Boom Juridische Uitgevers, 2012), pp.144-145.

Although the explanatory memorandum of the Electoral Code does make reference to the need for the appointment of people with integrity, the code does not contain any specific provisions to ensure the electoral council's integrity, nor the integrity of members of the supporting and polling stations. As reported in the above, it has yet to be adapted to comply with the 2010 recommendation to include more safeguards 'to ensure the[ir] independence, integrity and impartiality'. Also, because members appointed to the electoral council fall outside the scope of the civil servants regulations, the general integrity rules applicable to civil servants do not apply, and the electoral council does not have a separate code of conduct. At the moment, then, there are no specific regulations related to the selection of candidates or the integrity of their activities once appointed, such as restrictions on additional functions, rules on gifts or conflicting interests.

However, there are some safeguards built into the Electoral Code itself, because the code and delegated legislation detail how the electoral process is to proceed. Also, civil servants involved in the electoral process, such as those employed at the Civil Registry, have to comply with the general integrity rules for civil servants (also refer to Chapter VII.4 Public Sector). In addition, the Penal Code contains several provisions which may also safeguard the integrity of the activities of the members of the electoral council and the supporting and polling stations. Thus, for example, it is a criminal offence to tamper with ballots cast and engage in fraudulent acts which lead to different election results than would have been the result of votes cast legally.[727]

Integrity mechanisms (practice)

Score: 50

TO WHAT EXTENT IS THE INTEGRITY OF THE ELECTORAL MANAGEMENT BODY ENSURED IN PRACTICE?

In the absence of integrity rules and codes, no comprehensive approach to ensure the integrity of the electoral council exists and it is difficult to assess to what extent its integrity and that of the supporting and polling stations is ensured in practice. However, their integrity has not been questioned.

In light of the lack of legal provisions in place to ensure the integrity of the electoral council, it is difficult to assess to what extent its integrity and that of the supporting and polling stations is ensured in practice. However, according to one expert, while screening is not legally required, those engaged in the election process are in practice screened by the electoral council. In addition, the openness of the election process, allowing voters, political observers and international observers to scrutinise all activities, is said to provide for valuable checks and balances in practice. Also, it should be noted that integrity of the electoral council's current members has never been questioned, and there have been no reports of integrity breaches of supporting and polling stations.

[727] Penal Code, Book 2, Title IV, Articles 2:45 and 2:47.

Role

Campaign regulation

Score: 0

DOES THE ELECTORAL MANAGEMENT BODY EFFECTIVELY REGULATE CANDIDATE AND POLITICAL PARTY FINANCE?

The ordinance to regulate the financing of political groups has been adopted but is not yet effectively executed in practice. There are no specific regulations related to the allocation of media coverage.

With the change in the constitutional relations, the country ordinance on the financing of political groups came into force. Prior to October 2010, comparable legislation did not exist. Under the ordinance, the electoral council is responsible for the supervision of compliance with the new regulations, and is to use the administration's internal auditor to audit the annual accounts handed in.[728] Its supervisory tasks are not limited to the control of the annual reports, annual accounts and gift registers to be sent to the electoral council. The council is also authorised to exercise its supervisory powers if it suspects acts in violation of the ordinance, and may, in as far as is reasonably necessary to carry out its duties, for example, request any information and the inspection of all kinds of information carriers, including digital ones. The electoral council may also copy or temporarily confiscate them.[729] However, the council does not have means of coercion and is not able to levy sanctions. If it discovers or suspects that a political group or individual candidate has committed an offence, the electoral council is to report this to the Public Prosecutor.[730]

In practice, however, compliance with these regulations is not yet enforced by the electoral council. (Also refer to Chapter VII.10 Political Parties.)

There are no regulations as to the allocation of media coverage to political parties and candidates, and the electoral council does not have any powers in that respect.

Election administration (law and practice)

Score: 75

DOES THE ELECTORAL MANAGEMENT BODY ENSURE THE INTEGRITY OF THE ELECTORAL PROCESS?

The electoral council's work during the last elections has been assessed positively. Also, although rumours of vote-buying persisted, the electoral council did put in efforts to reduce the risks involved.

The electoral council is directly responsible for the validity of the lists of candidates handed in. This implies, for example, that the electoral council is required to check whether candidates are eligible for election, and that their personal information is correct. It also needs to verify that the lists of candidates are supported by a sufficient number of voters, do not contain more candidates than allowed and that candidates do not appear on more than one list.[731] The electoral council is required

728 Country ordinance Finance political groups, Articles 5 and 13.
729 Ibid., Article 17 and the explanatory memorandum.
730 Ibid., Article 18 and the explanatory memorandum.
731 Electoral Code, Articles 25, 28 and 29. Also refer to Articles 44 and 45 of the Constitution.

to deposit the validated lists at the Civil Registry for public inspection, inform those who handed in the lists of the omissions noted, and allow some three days for them to correct those omissions.[732] In addition, once the electoral council has decided on the validity of the lists, its decision may be appealed.[733] (Also refer to the sections on Transparency and Accountability.)

In practice, in the run-up to the elections, some problems were reported, mainly due to the fact that there was relatively little time to prepare for the elections. Thus, for example, at least one person who would have liked to have been put up for nomination, was not able to do so because he was not registered in the electoral register in time.[734] However, in general the registration of persons eligible to vote was considered to be practical and effective during the last elections, and international observers – invited to the elections by the interim government[735] – saw 'no persons who objected to not being in the voter's registry'. The electoral council also took a number of steps beforehand to ensure the integrity of the electoral process. For example, it organised informative sessions for the public on its activities, provided information for those who didn't receive or lost their voter registration card on how to replace it, and produced information leaflets in both Papiamentu and Dutch on the upcoming elections and voting process. It also sent out several press notices to inform voters through the different media on the upcoming election.

And although, as discussed elsewhere in this assessment, the run-up to the elections was far from quiet, the voting process itself was also generally assessed positively. (Also refer to Chapters VII.1 Legislature and VII.2 Executive.) International observers reported that '[o]ne could see the integrity of the process in general'.[736] Voters, parties and formal observers were allowed access to observe all stages, from polling to counting to result aggregations. Sensitive electoral materials such as ballots appeared tamper-proof and accounted for, albeit that – again due to the short preparation time available – there were reports of two misprints and the ballot boxes did not satisfy the detailed requirements of the Electoral Code.[737] The voting process was reported to be conducted in an orderly manner, even though voters in some polling stations were confronted with long queues. Facilities, including those for physically disabled voters, were good. Although there were no reports of voters not able to vote, the observers did recommend that a reallocation of voters to different polling stations should be considered as soon as possible, and, if possible, increase the total number of polling stations.[738]

On the negative side, in the period just before and after the October 2012 elections, some labelled the general atmosphere as 'grim', referring to reports of the destruction of campaign materials, verbal abuses and some reports of intimidation.[739] Also, there were persistent allegations similar to those of 2010, of buying votes, and promising money, laptops and Blackberries for a photo taken from the ballot booth. The electoral council issued a disciplinary regulation (*ordemaatregel*) and ruled that, although it was not forbidden to enter the polling station with a mobile phone, no one was allowed to use it 'for communication or to take a picture in the polling station'.[740] It remained unclear to what extent it was also possible to levy sanctions in case of non-compliance, and how to

[732] Electoral Code, Articles 25 and 26.
[733] Ibid., Article 30.
[734] 'Shortened closure time for electoral registration affects Osepa', 22 August 2012, via www.curacaochoronicle.com [accessed 17 March 2013].
[735] Cf. Answer to questions of member Van Dam (PvdA) to the minister of the interior and kingdom relations on irregularities during the elections on Curaçao, received 9 October 2012 (*Antwoord op vragen van het lid Van Dam (PvdA) aan de Minister van Binnenlandse Zaken en Koninkrijksrelaties over onregelmatigheden bij de verkiezingen op Curaçao, ontvangen 9 oktober 2012*), Dutch House of Representatives, Parliamentary Year 2012-2013, Annex to the Proceedings, 240.
[736] 'Report of the international observers, Parliament elections held on Friday October 19, 2012, in Curaçao', www.kse.cw [accessed 3 March 2013].
[737] On this, see Electoral Decree, general part.
[738] Report of the international observers.
[739] See on this, for example, 'VBC: intimidation is not acceptable' (*VBC: intimidatie is onacceptabel*), 9 October 2012 via www.versgeperst.com; 'FOL: political threats and destruction escalating' (*FOL: politieke bedreiging en vernieling lopen de spuigaten uit*), 8 October 2012 via www.kkcuracao.com [accessed 20 May 2013].
[740] Electoral council information brochure, via www.ksw.cw [accessed 5 March 2013].

accurately supervise compliance. Nevertheless, the measure was widely announced, posted on the electoral council's website and included in its information brochures. It was also supported by a press notice of the Public Prosecutor, which pointed out that buying votes as well as selling votes were criminal offences.[741] Whether or not the measures have been effective is difficult to assess, but according to an expert interviewed no one was observed violating the disciplinary rules.

[741] 'Buyers of votes will be punished' (*Kopers van stemmen worden gestraft*), 12 October 2012, via www.versgeperst.com [accessed 20 May 2013]. Also refer to Penal Code, Book 2, Title IV, Article 2:44.

VII.7 OMBUDSMAN

STRUCTURE AND ORGANISATION

Under the Constitution (*Staatsregeling)*, the Ombudsman is a High Council of State appointed by Parliament, which can use its findings for its scrutiny of the Executive.[742] The powers and responsibilities of the Ombudsman are detailed in the country ordinance Ombudsman.[743] The Ombudsman is authorised to investigate, on request or on his/her own initiative, the way in which an administrative body behaved towards a natural or legal person,[744] report on his/her findings and judgment as to whether or not the conduct of the administrative body was fully or partially appropriate, and may offer recommendations to take measures.[745] An office is provided to enable the Ombudsman to carry out his/her work, .[746] The first Ombudsman – then *Ombudsfunktionaris* – was appointed in 2003.[747]

ASSESSMENT

Capacity

Resources (practice)

Score: 50

TO WHAT EXTENT DOES THE OMBUDSMAN HAVE ADEQUATE RESOURCES TO ACHIEVE HIS/HER GOALS IN PRACTICE?

The Ombudsman usually receives adequate state funding, but recent budget cutbacks and procedural delays have made it more difficult for the Ombudsman to effectively perform his/her tasks. Also, attracting and keeping adequately equipped personnel remains a cause of concern.

The budget proposals of the Ombudsman's office are usually approved by Parliament without amendments or cutbacks and are said to have been sufficient, broadly speaking, to achieve the Ombudsman's goals.[748] However, the recent instruction to the Curaçao government to balance its

[742] Constitution of Curaçao (*Staatsregeling van Curaçao*), Official Curaçao Gazette 2010, No. 86, Article 71.
[743] Country ordinance Ombudsman, Appendix r, Official Curaçao Gazette 2010, No. 87, Article 27 and the explanatory memorandum. Also: Constitution, Article 71.5.
[744] Constitution, Article 71.2. Country ordinance Ombudsman, Article 12.5, with the exceptions mentioned in Articles 14 and 15.
[745] Country ordinance Ombudsman, Article 25.
[746] Ibid, Article 10.1.
[747] A similar function, the *ombudsfunktionaris*, was already called into existence in 2001, in the Island Territory Ombudsman Act. The first *ombudsfunktionaris* was appointed by the Executive Council (*Bestuurscollege)* in 2003. Its office became operational in August 2004. See Ombudsman van Curaçao, Annual Report 2010 (Curaçao: Ombudsman van Curaçao, December 2011), p.37.
[748] See, for example, Ombudsman van Curaçao, December 2011:30.

budgets[749] has led to lengthy procedures, also for the Ombudsman.[750] In terms of personnel, the Ombudsman's resources now consist of the Ombudsman and five staff members, including one vacancy. The Ombudsman has started a procedure to hire two more staff members.[751] Resources to educate and train personnel have also been sufficient, although the relatively costly education abroad increasingly exhausts the Ombudsman's budget.[752]

However, hiring issues remain a cause of concern, and the small size of the institution renders the Ombudsman's office vulnerable to staff turnover. For example, recently the current Ombudsman was, for a substantial amount of time, the only legal expert in the office.[753] The withdrawal of the former advice committee, considered to have been a 'valuable sounding board', only adds to the Ombudsman's vulnerability. Also, the country's fiscal situation negatively affects the Ombudsman's hiring capacity. As a result, available staff are quickly overburdened. This also implies that personnel and financial resources are not deemed sufficient to extend the services of the Ombudsman or to take up additional projects, such as advocating for the institution of a Children's Ombudsman to comply with the United Nations Convention on the Rights of the Child and increasing efforts to protect human rights.[754]

Independence (law)

Score: 100

TO WHAT EXTENT IS THE OMBUDSMAN INDEPENDENT BY LAW?

The new legislative framework includes many aspects to ensure the independence of the Ombudsman. However, not all aspects are covered and the Ombudsman does not enjoy explicit legal protection.

With the change in constitutional relations, the independence of the Ombudsman has been fortified. In the new Constitution, the Ombudsman is now added as one of the High Councils of State. Its powers and tasks are laid down in a country ordinance, amendments of which are to be adopted by both government and Parliament.[755]

The Ombudsman is to be appointed by Parliament, on the joint recommendation of the vice-president of the Council of Advice (*Raad van Advies*), the president of the Joint Court of Justice (*Gemeenschappelijk Hof van Justitie*) and the president of the Court of Audit of Curaçao (ARC – *Algemene Rekenkamer Curaçao*), containing the names of at least three people.[756] A regular majority suffices; a qualified majority is not mandatory. The Ombudsman is appointed for a period of

[749] See Decree of 2 November 2012 on the appeal of the Council of Ministers of Curaçao against the Decree of 13 July 2012 regarding the instruction to the government of Curaçao to adjust the budget of 2012 taking into account the financial standards mentioned in Article 15 of the Kingdom Act Financial Supervision Curaçao and Sint Maarten, Dutch Bulletin of Acts, Orders and Decrees, 2012, No. 535, as well as the instruction of 13 July 2012 referred to in this decree.
[750] See, for example, 'Ombudsman sounds the alarm on ex-ante supervision' (*Ombudsman trekt aan bel over voorafgaand toezicht*), Amigoe, 6 March 2013.
[751] Information received from the Ombudsman, 17 April 2013.
[752] Ombudsman of Curaçao, 2011:38; Ombudsman of Curaçao, Annual Report 2011 (Curaçao: Ombudsman van Curaçao, November 2012), p.40.
[753] Ombudsman of Curaçao, 2011:37. In the report over 2011 (p.34), the Ombudsman writes that the office has been able to attract new personnel, including a senior legal expert.
[754] See, for example, Ombudsman of Curaçao, 2012:43. Also, 'Ombudsman: safeguard rights of illegal child' (*Ombudsman: Rechten illegaal kind waarborgen*), Antilliaans Dagblad, 31 January 2013.
[755] Constitution, Article 71; Country ordinance Ombudsman, Article 2. Also refer to Article 112 and the explanatory memorandum on Article 112.
[756] Constitution, Article 71.3; Country ordinance Ombudsman, Article 3 and the explanatory memorandum, which underscores the Ombudsman's independence of government.

six years, and is only eligible once for reappointment.[757] However, there are no specific regulations stipulating that the recruitment of the Ombudsman and his/her staff is to be based on clear professional criteria.

The Ombudsman can only be suspended or dismissed by Parliament.[758] Again, a regular majority suffices. The law's list of legitimate reasons for suspension or early dismissal is short, specific and reasonable and includes a criminal conviction, placement under supervision, and suspension of payment.[759] Reasons for dismissal also include a situation in which the Ombudsman takes on a role which the law declares to be incompatible with the position of Ombudsman, such as a member of a permanent government advisory body, a solicitor, prosecutor or notary, or board member of a political party.[760] On the negative side, the Ombudsman and his/her staff do not enjoy explicit legal protection. (Also refer to the section on Accountability below.)

The Ombudsman has the power to determine the operational rules and the structure of the Ombudsman's office.[761] With the change in constitutional arrangements and the positioning as High Council of State, a further safeguard for independence was added. The Ombudsman is now similar to, for example, the Court of Audit and Parliament, competent to manage his/her own personnel, although in practice no own personnel have been contracted yet, and personnel may still opt to be appointed as civil servants.[762] Also, each year, the Ombudsman is to hand in his/her budget proposal to the Minister of Finance. The latter, after approval of the Council of Ministers, may amend the proposal in the overall budget sent to Parliament, but is required to mention the Ombudsman's budget proposal in the explanatory memorandum to the budget.[763] Moreover, within the budget thus allocated, the Ombudsman, again similar to other High Councils of State, is now authorised to manage his/her own budget.[764]

With the change in constitutional arrangements, the salary of the Ombudsman is to be regulated by country ordinance.[765] The Ombudsman's pension is set equal to the pension of a member of Parliament.[766] Other rights and duties regarding terms of employment are to be regulated by country decree, and also used to be comparable to that of a member of Parliament. However, as yet, both country ordinance and decree have not been enacted, and in practice the Ombudsman's salary now lags behind.[767]

[757] Country ordinance Ombudsman, Article 3.
[758] Constitution, Article 71.4; Country ordinance Ombudsman, Article 4.
[759] Country ordinance Ombudsman, Articles 4 and 5.
[760] Ibid., Articles 4 and 6. The Constitution also rules out membership of Parliament and government. The Kingdom Act Financial Supervision Curaçao and Sint Maarten rules out membership of the Board of Financial Supervision.
[761] Country ordinance Ombudsman, Article10.2.
[762] Ibid., Article 10.3 and Article 11; also refer to the explanatory memorandum on Article 10. Also: information received from the Ombudsman, 28 January 2013.
[763] Country ordinance Ombudsman, Article 11.2; Country ordinance Government accounts 2010 (*Landsverordening Comptabliteit 2010*), Official Curaçao Gazette, No.87, Appendix b, Chapter 4, especially Articles 34, 38 and 39 and the explanatory memorandum.
[764] Country ordinance Ombudsman, Article 11.1; Country ordinance Government accounts 2010, Article 39.3.
[765] Country ordinance Ombudsman, Article 7.1.
[766] Ibid., Article 7.2.
[767] Ombudsman of Curaçao, 2011:29; Ombudsman of Curaçao, 2012:35.

Independence (practice)

Score: 75

TO WHAT EXTENT IS THE OMBUDSMAN INDEPENDENT IN PRACTICE?

The Ombudsman is operating in a professional and non-partisan manner in practice. Other actors occasionally have attempted to interfere, but this has not had significant consequences for the Ombudsman's independence.

As far as is known, there have not been instances of political influence on previous appointment procedures, neither with respect to the appointment of the Ombudsman, nor with respect to his/her personnel.[768] And notwithstanding the occasional attempt at interference, the Ombudsman is thought to be able to do his/her job freely and without intimidation. The institution of the Ombudsman is a relatively new phenomenon, and not all actors involved are yet fully aware of his/her independent position as granted by law. However, the Ombudsman *is* aware of it and, as far as could be determined, has so far been able to withstand attempts to undermine this independence. Thus, for example, when a former prime minister 'asked' the Ombudsman for a 'written report' related to (a leaked document of) a complaint from within the Security Service Curaçao (*Veiligheidsdienst Curaçao*), the Ombudsman refused and publicly pointed out that compliance with the order would be detrimental to the independence of the Ombudsman.[769]

Also, there are no known cases of the Ombudsman or his/her staff compromising the institution's independence through political or other activities. For example, when the former executive secretary of the Ombudsman took on a career in politics, he immediately stopped working at the Ombudsman's office.[770] And when the current Ombudsman was mentioned in connection to politics, she underscored her independence publicly.[771]

As for reappointments, due to the relatively short existence of the institution no trend can yet be discerned. Up to now, there have been two Ombudsmen. The first was not reappointed after his term was over. The second, who was appointed in 2009, is still in place. And, according to an expert interviewed, although the law does not contain appointment criteria, when selecting an Ombudsman in the past the selection committee has always defined clear professional criteria in its recruitment procedure. The Ombudsman's office is also reported to have formulated criteria for the recruitment of staff and to use those criteria in recruitment procedures.

In addition, from the complainant's perspective, it appears that, in general, people feel free to file complaints ('petitions'). Also, according to an expert interviewed, there are known instances of government officials improving their act if they are informed that a person is considering filing a complaint with the Ombudsman. However, this assessment returned some examples of people who feared retaliation and retracted accusations when asked to put their complaint in writing. To prevent a situation in which specific behaviour cannot be investigated because someone feels threatened and therefore does not dare to file a request for an investigation, the Ombudsman may instigate an investigation on his/her own initiative.[772]

[768] Also refer to ARC, Report of activities during the years 2009, 2010 and 2011 (*Verslag van de werkzaamheden gedurende de jaren 2009, 2010 en 2011*) (Curaçao: ARC, October 2012), p.4.
[769] See, for example, 'Ombudsman bites back' (*Ombudsman bijt terug*), Antilliaans Dagblad, 12 March 2012, via www.abcourant.com [accessed 20 March 2013].
[770] Ombudsman of Curaçao, *Information bulletin of the Ombudsman*, 31 August 2012.
[771] See 'Ombudsman not involved with interim cabinet' (*Ombudsman niet betrokken bij interim cabinet*), 27 September 2012, via www.versgeperst.com [accessed 14 January 2013].
[772] Country ordinance Ombudsman, explanatory memorandum on Article 2. Cf. also explanatory memorandum on Article 14.

Transparency (law)

Score: 75

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC CAN OBTAIN INFORMATION ON THE RELEVANT ACTIVITIES AND DECISION-MAKING PROCESSES OF THE OMBUDSMAN?

The Ombudsman has a duty to make information about his/her activities public, but there are only limited provisions that would require the Ombudsman proactively to release different types of information to the general public between annual reports.

The Ombudsman is to provide anyone who makes a request to that end with a copy of or an extract from his/her report. The Ombudsman is also required to deposit a copy of his/her reports for public inspection at a location to be indicated by the Ombudsman.[773] In case the Ombudsman does not follow up on a petition to start an investigation, or does not continue the investigation, the announcement of this is to be made public in a similar manner.[774] Also, the Ombudsman must submit an annual report of his/her activities to Parliament, including information on the previous year's revenue and expenditure. S/he is also to ensure that this report – barring data to be communicated as confidential information to Parliament[775] – is made public and generally available.[776]

The explanatory memorandum to the country ordinance underlines the importance of transparency, stating among other things that the Ombudsman 'is to pass judgment in a public report' and 'shall perform his duties with the highest degree of disclosure possible'.[777] However, specific regulations to that effect do not exist. For example, the law does not contain a duty to maintain a public register of all complaints, reports and announcements, which limits the effectiveness of the transparency provisions that *are* included. The law also does not mention any time limits for the documents or reports to be made public, nor does it contain a duty for the Ombudsman to proactively publicise information. Also, there are no regulations concerning involvement of the public in activities of the Ombudsman. The latter – for example the advice committee mentioned in the above – did exist earlier,[778] but were not included in the new ordinance.

The Ombudsman is required to make his/her additional functions public.[779]

Transparency (practice)

Score: 50

TO WHAT EXTENT IS THERE TRANSPARENCY IN THE ACTIVITIES AND DECISION-MAKING PROCESSES OF THE OMBUDSMAN IN PRACTICE?

[773] Ibid., Article 25.6.
[774] Ibid., Article 16.2.
[775] Ibid., Article 27.3; Cf. items that fit the requirements as listed in Article 11 of the Act on public access to government information (*Landsverordening openbaarheid van bestuur*), Appendix t, Official Curaçao Gazette 2010, No. 87.
[776] Country ordinance Ombudsman, Article 27. Also refer to Article 11.
[777] Ibid., explanatory memorandum, general part.
[778] Island ordinance Ombudsman official Curaçao (*Eilandsverordening Ombudsfunktionaris Curaçao*), Official Curaçao Gazette 2011, No.69, Article 8.
[779] Country ordinance Ombudsman, Article 6.4.

The public can obtain information on the organisation and functioning of the Ombudsman and the Ombudsman does proactively provide information through different media. However, transparency could be improved, for example by providing more information on and access to the individual investigations carried out.

The Ombudsman makes (anonymised) individual reports and announcements available on request, as required, and also sends individual reports – or a summary if the report itself is confidential – to the press. In addition, the Ombudsman publishes annual reports. These reports contain information on operational management, summary financial information, external relations and the Ombudsman's policy outlook for the coming year. They also include some statistics on the complaints filed, an overview of the administrative bodies involved, general descriptions of the type of complaints handled and, in most reports, examples of complaints and the ways they were dealt with.[780] The annual reports often also contain a chapter discussing a relevant topic in more depth.

The Ombudsman also has a Facebook page to inform the public and provide for a low threshold to contact the Ombudsman.[781] Moreover, the Ombudsman informs the public of his/her activities and their rights and duties through a monthly magazine, which is released to the government, the press and the public. Also, in the course of this assessment, the Ombudsman's office launched a new, improved website.[782] At the time of writing it presents general information about the office and its activities, access to its annual reports (up to 2009), its monthly bulletins, the relevant legislative framework and its code of ethics. It also provides a direct link to file a complaint about an administrative body.

Moreover, when appointed, the current Ombudsman informed Parliament about her additional functions. To make the information more generally available, the Ombudsman has now also made an overview of additional functions available on the new website, and has announced that this overview will be included in future annual reports.[783]

However, similar to the previous website, as yet, the new website does not provide access to the Ombudsman's (anonymised) individual reports and announcements. This access is also not provided through the Ombudsman's annual reports, which do not include (a reference to) a complete list of all complaints filed to the Ombudsman, nor to all reports and announcements. Because the press does not publish all the information provided, there is limited transparency on a case-specific basis. This is especially true with regard to the many complaints dealt with through the intervention method, which are usually not formally reported on. (Also refer to the section on Role below.)

Accountability (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE OMBUDSMAN HAS TO REPORT AND BE ANSWERABLE FOR HIS/HER ACTIONS?

There are several provisions to ensure that the Ombudsman accounts for his/her actions, but they are not sufficiently specific. The Ombudsman is not required to have a complaints procedure.

[780] See, for example, Ombudsman of Curaçao, 2012, Chapter 3. Most annual reports contain such a chapter, but not all. The Annual Report 2010 only contains more general information about complaints to the Ombudsman.
[781] Ombudsman of Curaçao, 2011:39.
[782] www.ombudsman-curacao.cw.
[783] See 'Ombudsman', 'Korte CV' via www.ombudsman-curacao.cw [accessed 12 June 2013].Information provided by the Ombudsman, 28 January 2013.

The Ombudsman is required to report annually to Parliament, and Parliament may request the Ombudsman to provide further information to or in Parliament.[784] With regard to his/her financial management the Ombudsman is required to account through the regular Curaçao accountability processes.[785] The explanatory memorandum adds 'naturally, citizens are free to comment, based on the individual reports and the annual report by means of letters, the press or political parties on the activities of the Ombudsman'.[786]

Moreover, there are some legal provisions which allow the administrative bodies – and where applicable, the official whose conduct was the object of an investigation – as well as the complainant to explain their point of view and give their opinions, for example on the Ombudsman's preliminary findings.[787] And as soon as the Ombudsman has completed an investigation, s/he must notify those involved about the findings and opinion as soon as possible, although no deadline is specified.[788]

However, the law does not include time provisions nor what kind of information must actively be submitted to Parliament. The only specific requirement as to the annual report is to provide financial information.[789] Also, there are no provisions which *require* the Ombudsman to inform Parliament about the findings and opinions of individual investigations. S/he may do so, but it is not mandatory.[790]

The Ombudsman is also not required to have a complaints procedure. The general complaints and integrity provisions for civil servants apply for as long as the Ombudsman's employees are appointed as civil servants. When the Ombudsman's office personnel are contracted based on civil law, new procedures will have to be put in place.[791] Also, the Ombudsman's findings and opinions published in his/her official reports cannot be contested in court, because they are not considered to be administrative acts. However, as mentioned in the above, the Ombudsman and his/her staff do not enjoy explicit legal protection, and can – but so far have not been – held accountable in both civil and criminal court proceedings, including prosecution for abuses of office.

Accountability (practice)

Score: 50

TO WHAT EXTENT DOES THE OMBUDSMAN REPORT AND IS ANSWERABLE FOR HIS/HER ACTIONS IN PRACTICE?

The Ombudsman reports and is answerable for his/her actions as required, but his/her annual reports and findings and opinions are not discussed in Parliament, and the public makes little use the possibility to ask the Ombudsman for, for example, the annual report. The Ombudsman does have an internal complaints procedure.

As mentioned above, the Ombudsman reports to Parliament as required in his/her annual report, which contains a lot of information related to both the Ombudsman's investigations as well as the management of the Ombudsman's office. The information required on previous year's revenue and

[784] Country ordinance Ombudsman, Article 27.
[785] Ibid., Article 10 and Article 11 and the explanatory memorandum on Article 10.
[786] Ibid., explanatory memorandum on Article 27.
[787] Ibid., Articles 17 and 24.
[788] Ibid., Article 25.3.
[789] Ibid., Article 11.
[790] Ibid., Article 28.
[791] The Country ordinance Legal and material rights and obligations of civil servants (*Landsverordening Materieel ambtenarenrecht*), Official Curaçao Gazette, 2010, No.87, Appendix f contains several whistleblowing provisions, but does not apply to the Ombudsman and staff contracted by the Ombudsman himself (cf. Articles 1 and 2 of that ordinance).

expenditure is not included, but is reported to be sent to Parliament at the same time. The annual report itself includes a short financial statement.[792]

However, the annual reports are not discussed in parliamentary sessions, and neither are findings and opinions in individual reports of the Ombudsman. Moreover, accountability to the general public as envisioned in the explanatory memorandum is somewhat hampered, inter alia because access to individual reports up to now has been only provided for in a passive sense and requires the public to be informed about their availability. This may improve with the new website, but it is too early to tell because the process to renew the website has not yet been completed. In practice, so far, the public has made little use of the opportunity to ask the Ombudsman for information about his/her actions. (Also refer to the section on Transparency.)

On the positive side, however, Parliament has recently designated a specific committee to deal with the Ombudsman's work, which may result in better and more efficient communication lines. Also, the Ombudsman does have an internal complaints procedure, which allows for both the complainant and the employee against which the complaint is directed to be heard and, if they so desire, further discussion of the issue in the presence of an observer. The Ombudsman rules on the issue. So far, five complaints have been issued, two of which were withdrawn. The other three were solved through mediation.[793]

Integrity mechanisms (law)

Score: 75

TO WHAT EXTENT ARE THERE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF THE OMBUDSMAN?

There are some legal provisions aiming to ensure the integrity of the Ombudsman. Also, the Ombudsman has recently adopted a code of ethics including many of the relevant provisions aiming to ensure integrity.

There are no rules related to pre-employment screening. However, as noted in the section on independence, there are rules to prevent conflicting activities carried out by the Ombudsman, such as those prohibiting the Ombudsman from taking on a role which the law declares to be incompatible with the position of Ombudsman. Also, additional functions have to be made public, but there are no obligations to file asset declarations, including all sources of income. In addition, before accepting office, the Ombudsman has to swear an oath or solemnly affirm in the presence of the president of Parliament that s/he has not given or promised anything to obtain the appointment, has not been and will not be bought, and that will abide by the Constitution.[794]

The Ombudsman and his/her office also have a duty to keep matters that become known to them in the performance of their duties confidential, if the nature of such matters makes this necessary and unless they are legally obliged to do otherwise.[795]

Until recently, the Ombudsman was not covered by a code of conduct.[796] However, in April 2013, the Ombudsman adopted a code of ethics.[797] This code includes a provision which prohibits the Ombudsman and his/her staff to take on additional functions which are not compatible with the

[792] Cf. Country ordinance Ombudsman, Article 11.3 and Ombudsman of Curaçao, 2012, Chapter 4.
[793] Information received from the Ombudsman, 28 January 2013.
[794] Country ordinance Ombudsman, Article 8.
[795] Ibid., Article 26.
[796] Commission of experts, Assessment of government apparatus Curaçao and Sint Maarten (*Toetsing overheidsapparaten Curaçao en Sint Maarten*) (s.l.: Commission of experts, May 2010), p.77; Ombudsman of Curaçao, 2012:42; Information received from the Ombudsman, 28 January 2013.
[797] Code of Ethics Office of the Ombudsman Curaçao (*Gedragscode Bureau Ombudsman Curaçao*), 25 April 2013.

proper execution of their tasks, as well as a provision which prohibits them from accepting any gift representing a value of more than NAf 50 (US$ 28). Gifts below that threshold are to be reported and registered internally. The code also stipulates that the Ombudsman and his/her staff may not be party to or have an interest in a decision taken in their function. The code furthermore espouses values such as professionalism, objectivity, respect and trustworthiness, and underscores the duty of confidentiality.

Staff currently appointed as civil servants are also covered by the general integrity regulations for civil servants. (Also refer to Chapter VII.4 Public Sector.)

Integrity mechanisms (practice)

Score: 50

TO WHAT EXTENT IS THE INTEGRITY OF THE OMBUDSMAN ENSURED IN PRACTICE?

The Ombudsman is reported to undertake several activities to ensure the integrity of the Ombudsman's office, and there are no indications that it is not adequately ensured. However, as the code of ethics was only adopted recently, there presently is not sufficient information to assess whether or not it is applied effectively in practice.

Although not legally required, before staff are appointed the Ombudsman makes inquiries into criminal antecedents, additional functions, and activities of spouses. Those inquiries do not cover financial interests. Also, the Ombudsman's staff are trained on integrity and corruption issues on a regular basis, and the Ombudsman regularly meets with other ombudsmen in the region or within the Kingdom to discuss good practices.[798] The Ombudsman notes, however, that education and training abroad can be expensive. In the past, this limited the number of people able to follow training courses. Against this background, the Ombudsman has invested in improved local training opportunities.[799]

In practice, no cases of gross misconduct on the job have been recorded up to now.

Role

Investigation

Score: 50

TO WHAT EXTENT IS THE OMBUDSMAN ACTIVE AND EFFECTIVE IN DEALING WITH COMPLAINTS FROM THE PUBLIC?

On an individual case basis, the Ombudsman is active and appears to be effective. A lack of government commitment combined with an absence of legal provisions for sanctioning non-compliance, however, hamper structural improvements.

[798] See, for example, Ombudsman of Curaçao, 2012:40; also Ombudsman of Curaçao, 2011:29 and 38.
[799] Ombudsman of Curaçao, 2011:38.

The Ombudsman has broad legal powers to investigate complaints. Administrative bodies and, if applicable, the officials in question, are under an obligation to supply information requested, although the law contains some restrictions to allow information to be withheld for 'important reasons' and includes some procedural rules to inquire about policy-related information.[800] Also, the Ombudsman may enter all places deemed necessary (except homes) and use the long arm of the law to force, for example, witnesses and experts to cooperate.[801]

As such, the possibility for citizens to ask the Ombudsman to use these powers complements provisions for interested parties to go to administrative court against actual decisions of administrative bodies and the possibility for citizens to go to civil court to address unlawful acts.[802] The Ombudsman is – in principle – legally required to follow up any request for an investigation into the way an administrative body has acted against a natural or legal person, but, before starting an investigation, is to ask the complainant whether or not s/he has informed the administrative body involved of her/his objections against the conduct and provided it with the opportunity to make its views known.[803]

However, there are some exceptions. The Ombudsman is *not* authorised to handle complaints that deal with issues related to general government policy. Also, the Ombudsman does not have jurisdiction as long as, for example, complainants have legal recourse to an objection or appeal under administrative law. S/he has a 'referral' duty if s/he believes that some other statutory remedy is available to the petitioner under administrative law.[804] Furthermore, within his/her jurisdiction, the Ombudsman has *discretionary powers* to decide whether or not to investigate. For example, s/he may decide not to investigate if a statutory remedy under administrative law was available, but was not used.[805] On the other hand, as mentioned in the above, s/he may also decide to investigate an anonymous claim, even though formal complaints are in principle required to contain the complainant's name. In addition, the Ombudsman is entitled to instigate an investigation on his/her own initiative.

The explanatory memorandum of the country ordinance further explains that the Ombudsman is to exercise restraint as long as an administrative body is able and willing to address the complaint itself.[806] In practice, the Ombudsman interprets this in a strict manner, and states that 'it is not possible to file a complaint without first making a request to the administrative body concerned'.[807] If the administrative body does not provide a response within a reasonable time frame – which is frequently the case – or if the complainant finds its response unsatisfactory, the Ombudsman may be contacted. Only in special cases, the Ombudsman notes, it may take on a case not previously lodged with the administrative body itself. [808]

The number of actual complaints (petitions) lodged at the Ombudsman is considerable, also because, as already noted by the a commission of experts in 2010, a general regulation that provides for procedural rules to deal with complaints within the administration itself is lacking.[809] In 2011, 724 complaints were lodged to the Ombudsman. Of those, 93 fell outside the Ombudsman's jurisdiction and were, where possible, referred. Of the 631 complaints dealt with, 329 were formally admissible. Three hundred and two complaints concerned public companies or foundations.

[800] Country ordinance Ombudsman, Article 18.
[801] Ibid., Articles 19 and 23.
[802] Ibid., explanatory memorandum, general part.
[803] Ibid., Article 12. Cf. General administrative law act (*Algemene wet bestuursrecht*), Article 9.20.
[804] Ibid., Articles 15 and 13.
[805] Ibid., Article 14, example mentioned in 14.f.
[806] Ibid., Article 12.3, Article 13 and Article 15.c and the explanatory memorandum on Article 12. Before the change in constitutional relations, this was not the case. Before, the Ombudsman was entitled to start an investigation, even though other – administrative, civil or criminal – procedures were available. See, for example, Ombudsfunktionaris of Curaçao, Annual Report of the Ombudsfunktionaris of the Island Territory of Curaçao 2009 (Curaçao: Ombudsfunktionaris of Curaçao, May 2011): p.11.
[807] Ombudsman of Curaçao, 2012:11.
[808] Ibid.
[809] On the lack of a general regulation, see Ombudsman of Curaçao, 2012:10. Also: Commission of experts, 2010:78.

Because they are not considered to be administrative bodies and fall outside the Ombudsman's jurisdiction, they were dealt with on a voluntary basis.[810] Typically, complaints concern issues such as the length of procedures to receive financial support or to acquire permits, and improper ways of dealing with people.[811] The Ombudsman also receives complaints about suspected integrity breaches, but does not register those separately. (Also refer to Chapter VII.4 Public Sector.)

If the Ombudsman decides to follow up on a complaint, s/he may start a formal investigation. When concluded, this results in a report in which the Ombudsman determines whether or not the investigated action was fully or partially appropriate. If s/he deems fit, s/he provides some recommendations.[812] The Ombudsman may also use the intervention method and act as a mediator to find a solution,[813] usually a more speedy method to achieve the complainant's goal. In practice, most complaints – approximately 80 per cent – are followed up with the intervention method rather than a full investigation.[814]

This assessment did not show whether or not the efforts of the Ombudsman in general have been effective, as this has not been studied yet. However, the large number of complaints received seem to indicate that the Ombudsman does fulfill a need. Also, the high number of cases dealt with through interventions suggests a significant number of complaints is successfully solved, even though not all complainants are satisfied with the result achieved through the Ombudsman's intervention.[815]

However, on a more general level, we noted that the Ombudsman's work could be more effective if working relations with the administration improves. Because the law does not contain any sanctions for non-compliance, in practice, this implies that necessary information is not always easy to obtain.[816] Contact with government is reported to be increasingly time-consuming for the Ombudsman's office, especially since the failure to appoint new contact persons after the change in constitutional relations.[817] Positive interactions notwithstanding, government officials are said to not always cooperate with the Ombudsman, and it can take months to receive answers.[818] To deal with this limitation, the Ombudsman has prepared an amendment of the country ordinance Ombudsman to incorporate the possibility of sanctions, such as disciplinary sanctions and fines, for those who refuse to cooperate with the Ombudsman's investigation. More effective internal complaint handling by the government may also enhance the Ombudsman's work, and allow for more pro-active investigations. At the moment, investigations undertaken at the Ombudsman's initiative are limited, and priority is given to making up for delays in dealing with complaints.[819] However, some Ombudsman-instigated investigations are carried out, such as a recent investigation into the compliance of government with judicial verdicts.[820]

The Ombudsman's office does not have financial expertise. If such expertise is needed, the Ombudsman will refer the complaint to other institutions such as the government's internal auditor, the Court of Audit, or the Public Prosecutor's Office.[821]

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810 Ombudsman of Curaçao, 2012:14.
811 Cf. Ibid., Chapter 2.
812 Country ordinance, 2010, No. 87, Article 12.5 and Article 25.1.
813 Ibid., Article 12.9.
814 See, for example, Ombudsman of Curaçao 2012:14.
815 See, for example, 'Ombudsman fails' (*Ombudsman laat het afweten*), Antilliaans Dagblad, 5 March 2013.
816 Note, however, that the Penal Code, Title XXVIII, does contain criminal sanctions for abuses of power (*ambtsmisdrijven*).
817 Ombudsman of Curaçao, 2012, 6 and 40.
818 Cf. Annual Report 2011, Chapter 2.
819 Ibid., Article 2.2; see, for example, Ombudsman of Curaçao, 2011:26.
820 See on this, for example, 'Ombudsman investigates behavior departments' (*Ombudsman onderzoekt gedrag ministeries*) via internationaljustice.rnw.nl [accessed 20 March 2013].
821 Verton Advies N.V., Controle en Advies Model Financiën Pais Kòrsou. Concept Report (Curaçao: Verton Advies N.V., April 2010), p.24.

Promoting good practice

Score: 75

TO WHAT EXTENT IS THE OMBUDSMAN ACTIVE AND EFFECTIVE IN RAISING AWARENESS WITHIN GOVERNMENT AND THE PUBLIC ABOUT STANDARDS OF ETHICAL BEHAVIOUR?

The Ombudsman is active, but not always effective, in raising awareness within government and the public about standards of ethical behaviour.

The Ombudsman is a 'watchdog' to help ensure good governance and protect civilians' rights and interests against improper acts of government, including violations of administrative integrity such as fraud or corruption.[822] All administrative bodies, including their personnel, are under the Ombudsman's jurisdiction. Legislative, judiciary, advisory and monitoring bodies do not fall under his/her jurisdiction.[823] As mentioned, public companies and public foundations are also not included. However, in practice, the Ombudsman does deal with complaints about the latter, albeit on an informal and voluntary basis.[824]

As mentioned, the law requires both sides to be heard. This implies that, in formal investigations, the Ombudsman is to consult the administrative agency or person involved several times. The Ombudsman may also decide a direct intervention is more appropriate than a formal investigation.[825] When closing his/her investigation, the Ombudsman may provide the administrative body with recommendations. The administrative body is legally required to inform the Ombudsman whether (and if so, how) it will implement those, and has to state its reasons for not (fully) complying with the recommendations. However, no time limits are included, and the reaction of the administrative body is not explicitly required to be made public.[826]

In practice, the Ombudsman promotes good practice in several ways. The Ombudsman's information leaflet lists a number of fundamental rights of citizens related to good governance. The Ombudsman also publishes a monthly magazine to inform the public about specific cases. In some annual reports, the Ombudsman also provides recommendations. Thus, in the 2011 annual report, the annex contains an overview of recommendations on whistleblowing and data protection issues arrived at during an international conference organised by the Ombudsman.[827]

On a more case-specific level, the Ombudsman offers recommendations to administrative bodies to restore good practice. However, the aforementioned recent lack of contact persons has proven to be a source of inefficiency. In addition, the Ombudsman's efforts are ineffective in those instances where an administrative body does not feel obliged to follow the Ombudsman's recommendations. In its 2011 annual report, the Ombudsman concluded that not everyone working in government is aware of the tasks and responsibilities of the Ombudsman. To make government officials more aware, an important aspect of the Ombudsman's current work is to inform those in administration about the institution and why it is important for government to cooperate with the Ombudsman's investigations.[828]

[822] Country ordinance Ombudsman, explanatory memorandum, general part.
[823] Ibid., Article 1.1c and the explanatory memorandum on Article 1.
[824] See, for example, Ombudsman of Curaçao 2012:14. Also refer to Verton Advies N.V., April 2010:23.
[825] Country ordinance Ombudsman, explanatory memorandum, general part, ad 3.
[826] Ibid., Article 25.4.
[827] Ombudsman of Curaçao, 2012:52 and onwards.
[828] Ibid., 2012:6 and 40.

VII.8 SUPREME AUDIT AND SUPERVISORY INSTITUTIONS (PUBLIC SECTOR)

STRUCTURE AND ORGANISATION

The administration's financial audit and supervisory system is made up of both internal and external institutions. This chapter discusses three of the main institutions, that is, the supreme audit institution ARC, the administration's internal auditor SOAB, and the Board of financial supervision Cft.

The Curaçao Court of Audit (ARC – *Algemene Rekenkamer Curaçao*) is the administration's supreme external audit institution. It is responsible for examining the country's revenues and expenditures. As such it assists Parliament in its role to scrutinise the work of government.[829] The current Court of Audit has been in place since 10 October 2010, but its predecessor, the Court of Audit Netherlands Antilles (ARNA – *Algemene Rekenkamer Nederlandse Antillen*), dates back to 1953.[830] ARC is a High Council of State and consists of three members, including a president (referred to below as 'the board'). Its main task is the auditing of the financial and material management of the public administration in the broadest sense.[831] To do so, ARC performs regularity audits, performance audits and administrative integrity audits.

ARC may use the findings of the internal audits of the administration's internal auditor, as of 1994 one of the tasks of SOAB (*Stichting Overheidsaccountants Bureau*).[832] SOAB is a public foundation with a board of managing directors appointed by a supervisory board of five to seven people.[833] SOAB has a broad aim, which includes auditing of the financial and material management of public finances and possessions, and also covers investigations with respect to financial irregularities, administrative organisation and internal control.[834]

Since 10 December 2008, and as part of the agreements between the Kingdom partners to reorganise the constitutional order, a form of temporary[835] financial supervision based on consensus

[829] Constitution of Curaçao (*Staatsregeling van Curaçao*), Official Curaçao Gazette 2010, No.86, Article 68 (Below: Constitution). The explanatory memorandum on Article 68 adds that ARC must approve the accounts, but this is no longer reflected in the Constitution.
[830] ARNA, Report on activities during the years 1991 to 2006 (*Verslag van de werkzaamheden gedurende de jaren 1991 tot en met 2006*) (Curaçao: Algemene Rekenkamer Nederlandse Antillen, July 2007).
[831] Country ordinance Court of Audit Curaçao (*Landsverordening Algemene Rekenkamer Curaçao*), Official Curaçao Gazette 2010, No.87, Article 1. In two other regulations, ARC is also authorised to audits the financial statements of the Civil Servants Pension fund Curaçao (*Ambtenaren Pensioenfonds Curaçao*, APC, previously known as APNA) and the *Landsloterij*, the Country's lottery.
[832] Ibid, article 24 and the explanatory memorandum on Articles 22 and 24. Country ordinance Cooperation with Foundation Administration's Accountants Bureau (SOAB) (*Samenwerking met Stichting Overheidsaccountantsbureau*) AB 1993, No.51. When asked, Transparency International was informed that the procedure to formally appoint SOAB as the internal auditor of the Country Curaçao was in process, but not yet concluded. On 10 April 2013, the minister of finance presented a draft ordinance to correct for this to Parliament (Parliament of Curacao, 2012-2013, No.32). In practice, dealings between government and SOAB and those between ARC and SOAB have followed the ordinance valid before the change in constitutional relations.
[833] Charter SOAB, Article 7.
[834] Ibid, Article 3.
[835] Kingdom Act Financial Supervision Curaçao and Sint Maarten (*Rijkswet financieel toezicht Curaçao en Sint Maarten*), Bulletin of Acts and Decrees 2010, No.334 (below: Kingdom Act), Article 33. The Curaçao

was introduced, and with it the Board of financial supervision (Cft – *College financieel toezicht*). The tasks of Cft are laid down in the Kingdom Act Financial Supervision Curaçao and Sint Maarten.[836] They are directed towards the adoption and execution of budgets, to be balanced within the limitations as agreed upon, and on the control of loans. Cft consists of four members including a president. Cft has monitoring and advisory duties, both towards the Council of Ministers of Curaçao and, when relevant, the Council of Ministers of the Kingdom. Only the Council of Ministers of the Kingdom has the power to instruct the Curaçao government.[837]

ASSESSMENT

Capacity

Resources (law and practice)

Resources: 5

TO WHAT EXTENT DO THE SUPREME AUDIT AND SUPERVISORY INSTITUTIONS (PUBLIC SECTOR) HAVE ADEQUATE RESOURCES TO ACHIEVE THEIR GOALS IN PRACTICE?

The institutions are responsible for their own personnel and budget management, and in practice have adequate resources to perform their goals.

The law prescribes that Parliament, in accordance with ARC and the minister concerned, is to provide ARC with all facilities necessary to perform its duties 'well' and 'independently'. ARC is responsible for its own budgetary management. Each year, the secretary of ARC is to indicate what budget, including investments, in the opinion of ARC, is needed.[838] These proposals of ARC are usually accepted without cutbacks, although this is not always the case. ARC may apply for additional resources via the minister of finance if needed, but so far this has not been necessary.[839]

As for personnel, ARC's staff is more or less adequate to fulfill its duties although the actual number of people employed is below the approved staffing level. The office's workforce of around 19 people has been relatively stable, and has not decreased with the change in constitutional relations and the concomitant decrease in the scope of its activities.[840] ARC is competent to manage its own personnel which includes the possibility to conclude employment contracts based on civil law.[841] Salaries are more or less competitive with those in the private sector, and ARC does not have

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government plans to institute a Chamber of the Budget (*Begrotingskamer*) to exist next to and eventually replace the Cft. On this, see for example the explanatory memorandum of the Budget for 2013, draft as sent to the Curacao Parliament on 14 December 2012, p.36.

[836] More precisely, from 10 December 2008 to 10 October 2010, the Cft supervised Curaçao's budget. From 10 October 2010, the Cft Curaçao and Sint Maarten is the official supervisory board. The legal base of the Cft was the Decree on Temporary Financial Supervision Netherlands Antilles, Curacao and Sint Maarten. Also see www.cft.an.

[837] Kingdom Act, Articles 2 and 4 and the explanatory memorandum, sections 3.1 and 3.2.

[838] Country ordinance Court of Audit, Article 49 and the explanatory memorandum. Also country ordinance Government accounts 2010 (*Landsverordening Comptabiliteit 2010*), Official Curaçao Gazette 2010, No.87, Appendix b, Articles 34, 38 and 39 and the explanatory memorandum.

[839] Also see, for example, ARNA, July 2007: 18.

[840] Cf. ARC, Report of activities during the years 2009, 2010 and 2011 (*Verslag van de werkzaamheden gedurende de jaren 2009, 2010 en 2011*) (Curaçao: ARC, October 2012a), p.7 and earlier reports.

[841] Country ordinance Court of Audit Curaçao, Article 12.

significant problems in attracting personnel with an adequate educational background. Development of expertise is now on ARC's agenda, but a structural staffing policy is not yet in place.[842]

SOAB itself is to ensure sufficient capacity and means to achieve the foundation's goals.[843] It has its own budget, and derives its capital among other things from fees for services to government(s) and subsidies such as those from USONA[844]. Each year, SOAB and the Curaçao government jointly determine the compensation for the services and facilities to be provided. This compensation includes both audit and advisory activities. SOAB may put in a request for additional incidental extra resources, to be approved by Parliament in the course of the regular budgetary process.[845] At the moment, SOAB's budget is reported to be sufficient, but there are no long-term commitments. SOAB is also competent to manage its own personnel, with competitive salaries.[846] Its workforce of around 65 people is relatively stable, and includes both financial and other academic professionals. They are adequately educated and trained, in part due to SOAB's professional link with the Dutch cooperative network, Quality-testing Public Auditors (KOA – *Kwaliteitstoetsing Overheidsauditors*)[847] and a cooperation agreement with the Audit Office of the Dutch central government.

Cft is funded from the Dutch state budget according to the approved budget, which can but does not need to be the same as Cft's budget proposal.[848] Cft manages its own budget, which is thought to be sufficient to perform its duties. The secretary and staff are made available on the recommendation of Cft on behalf of the Dutch minister of the interior and kingdom relations, and are under the management of Cft.[849] Cft's available personnel resources, of around 18 people, are adequate to perform its duties. Staff members have an adequate academic background and sufficient previous work experience, as well as adequate career development and training opportunities.[850]

Independence (law)

Score: 75

TO WHAT EXTENT IS THERE FORMAL OPERATIONAL INDEPENDENCE OF THE SUPREME AUDIT AND SUPERVISORY INSTITUTIONS (PUBLIC SECTOR)?

The legal framework contains important provisions to ensure formal independence of ARC and Cft, and SOAB's positioning as a public foundation strengthens its formal operational independence as internal auditor. However, not all aspects, such as those on political activities, are always covered, and some regulations leave room for discretion.

The principle of ARC's independence, although to the regret of ARC itself is no longer explicitly mentioned in the Constitution, follows from its positioning as High Council of State and may also be

[842] ARC, October 2012a: 18. Commission of experts, Assessment of government apparatus Curaçao and Sint Maarten (*Toetsing overheidsapparaten Curaçao en Sint Maarten*) (s.l.: Commission of experts, May 2010), p.73.
[843] Charter SOAB, Article 4.
[844] This stands for Executing Agency of the Foundation for the Development of the Netherelands Antilles.
[845] Ibid, Article 5; country ordinance Cooperation with SOAB, Article 8.
[846] Ibid. Also refer to Commission of experts, May 2010: 37.
[847] SOAB, Annual Report 2011 (Curaçao: SOAB, June 2012), p.23. Commission of experts, May 2010: 37. SOAB's personnel is to perform duties for other clients than Curaçao as well.
[848] Kingdom Act, Article 9 and explanatory memorandum. Also refer to Cft's board rules (below: Board rules), Article 8.
[849] Kingdom Act, Article 6.
[850] Cft's personnel are to perform other duties, related to other islands within the Kingdom, as well.

found in some articles in the ordinance further detailing its structure, composition and powers.[851] Also, ARC can carry out its audits in accordance with a self-determined programme and methods. The law only stipulates what type of research ARC is to do, but does not require ARC to have its agenda approved. ARC establishes its own rules of procedure, and its president supervises its activities. Parliament may request ARC to conduct specific investigations, but ARC decides whether or not to comply with such a request.[852]

ARC's board members are appointed by Kingdom Decree each chosen from a binding proposal of two candidates selected by Parliament. To create extra safeguards for independence, Parliament in turn is to choose from a list of three candidates drawn up by ARC itself.[853] There are, however, no specific regulations stipulating that recruitment to the board is to be based on clear professional criteria. With the change in constitutional relations, members of the board can no longer be appointed for life and are now, similar to other High Councils of State, appointed for a fixed term of office, in case of ARC for five years. They can, however, be reappointed immediately, and may serve multiple consecutive terms.[854] Members of the board can only be suspended or dismissed by the Court of Justice.[855] The law lists some instances which will automatically result in dismissal, such as a criminal conviction and certain (but not all[856]) family ties. Others, such as 'misconduct', leave more room for discretion, although in those cases dismissal does require the Council of State and Parliament to be heard on the issue.[857]

Some additional provisions further underscore the importance of ARC's objectiveness. Among other things, the board and Secretary cannot take on other public office with any kind of financial compensation attached to it[858] or any position that is otherwise undesirable in view of the proper fulfilment of their position or for maintaining their impartiality and independence and trust therein.[859] Similar provisions on additional functions and activities are in place for personnel.[860] In addition, the board members, secretary and personnel are not allowed to have any financial interest in state activities, and if they do, this is considered to be a criminal offence to be punished as such.[861] There are no explicit restrictions on political activities, and board and staff members are not required to make their additional functions, if any, public.[862]

SOAB is a public foundation which can adapt its own charter and enjoys considerable independence as the administration's internal auditor. Thus, for example, only the supervisory board's chair is appointed by country decree, and only at the proposal of the supervisory board of at least two candidates. Other members are appointed by co-option. Appointments to the supervisory board are for four years, and may be extended twice, each for four years.[863] They can only be suspended or dismissed by a qualified majority of the supervisory board itself and, in case of a civil law procedure, on request of stakeholders such as government or the public prosecutor, including in the case of

[851] Constitution, Articles 68 and 70 and, for example, Country ordinance Court of Audit, Articles 7 and 49 and the explanatory memorandum. Also refer to country ordinance Government accounts 2010. Cf. ARC, October 2012a: 3.
[852] Country ordinance Court of Audit, Articles 13, 14 and 30.
[853] Constitution, Articles 69 and 34; Country ordinance Court of Audit, Article 3. Also refer to ARNA, Report on activities during the years 2007 and 2008 (*Verslag van de werkzaamheden gedurende de jaren 2007 en 2008*) (Curaçao: ARNA, July 2009), p.24.
[854] Country ordinance Court of Audit, Article 3 and explanatory memorandum. Also refer to ARC, October 2012a: 22.
[855] Constitution, Article 69. Note, however, that at the moment, there is a discrepancy with the country ordinance which refers to the Governor. This has been brought to the attention of the relevant parties.
[856] Country ordinance Court of Audit, Article 6 allows for ties of relationship to the second degree to be declared compatible by country decree.
[857] Ibid, Article 10.
[858] Ibid, Article 7. For the Board, also refer to articles in the Constitution and the Kingdom Act, Article 3.
[859] Country ordinance Court of Audit, Article 7.
[860] Court of Audit's Staff Regulations, as consulted at the Court of Audit on 13 May 2013.
[861] Ibid, Articles 11 and 50. But compare Article 10.
[862] General civil servant regulations do not apply, because neither the members of the board nor the employees of ARC, whose contracts are based on civil law, fall within the scope of the country ordinance Legal and material rights and obligations of civil servants (cf. Articles 1.3.a and 2.1f).
[863] Charter SOAB, Article 10.

manifestly bad governance.[864] In addition, members of the board of directors and the chairperson of the supervisory board are required to be chartered accountants or certified public accountants, and there are some provisions to guarantee their independence.[865] Nevertheless, government does have some instruments to influence SOAB's activities, if only through its annual budget negotiations. In the end, of course, Parliament and government may also choose to appoint another organisation as the administration's internal auditor. In addition, charters are required to be in line with the current legislation, and changes therein, such as those involved with the new corporate governance regulations, may necessitate a change in SOAB's charter.[866]

Cft derives its independent position from the Kingdom Act Financial Supervision Curaçao and Sint Maarten, which stipulates that board members of Cft shall be appointed on the basis of their expertise and are to act independently of outside influence ('*zonder last of ruggenspraak*').[867] This Act can only be amended if all countries involved agree.[868] Cft's members of the board are appointed by Royal Decree, via the Council of Ministers of the Kingdom. They are appointed for three years, with no legal limit to the number of reappointments. One of the board members is to be appointed in accordance with the sentiment of the Curaçao government. However, board members can only be suspended or dismissed by the Council of Ministers of the Kingdom; the recommending administration merely needs to be consulted.[869] Also, it is up to the Council of Ministers of the Kingdom to judge whether or not the board is severely failing in the performance of its duties.[870] There are some specific regulations on incompatibility of positions, and members of the board are required to publish information on additional functions.[871]

Neither ARC, SOAB nor Cft have any specific form of immunity from prosecutions based on their normal duties.

Independence (practice)

Score: 75

TO WHAT EXTENT ARE THE SUPREME AUDIT AND SUPERVISORY INSTITUTIONS (PUBLIC SECTOR) FREE FROM EXTERNAL INTERFERENCE IN THE PERFORMANCE OF THEIR WORK IN PRACTICE?

ARC, SOAB and Cft appear, to a large degree, free from external interference. However, there are some worries that the high demand for SOAB's services in general interferes with its operational performance in one of its tasks, that is, its audit of the government's accounts.

There are no examples, recent or otherwise, of political influence on appointments in any of the three institutions discussed here. The same goes for political influence on activities, although those interviewed indicated that there will always be attempts to do so and it may take quite some effort to be able to keep a firm stance. Political influence on adding an investigation to an already full agenda cannot be ruled out. However, there is some concern as to SOAB's ability to adequately perform its activities related to the auditing of Curaçao's annual account. SOAB's scope of activities is very broad, and its expertise is in high demand. In practice, SOAB's resources are allocated to a variety

864 Ibid, Article 14. Cf. Civil Code, Book 2, Articles 11 and 55.
865 Charter SOAB, Articles 7.1, 10.1 and Articles 4, 17.2 and 18.1.
866 See STBNO on concept Charter SOAB, 13 November 2012, available at www.sbtno.org. Cf. the explanatory memorandum of the Country ordinance Corporate governance (*Landsverordening Corporate governance*), Official Curaçao Gazette 2008, No.23, general part.
867 Kingdom Act, Article 2.
868 Ibid, explanatory memorandum. Cf. Article 38 of the Charter for the Kingdom of the Netherlands (*Statuut voor het Koninkrijk der Nederlanden*), Bulletin of Acts and Decrees 2010, No.775.
869 Kingdom Act, Article 2.
870 Ibid, Article 10.
871 Ibid, Article 3.

of both audit and advisory activities. To be sure, all activities are with the tasks assigned to SOAB, and the government makes full use of all services provided. Nevertheless, according to some, the heavy workload thus levied is to the detriment of one of the core elements of the accountability process, the provision of assurance about the information provided in the country's annual accounts.[872](Also refer to the section on Role, below.)

There are no documented cases reported on board or staff members engaging in political or other types of activities prohibited by law, or conducting other activities that might compromise the institutions' independence. However, as mentioned above, neither ARC nor SOAB is required to make information on additional functions public, and they do not publicise such information in practice. Cft does publish information on additional functions of its board members, as required by law.[873]

There are no examples of board or senior staff members being removed from their position before the end of their term. Cft only has a relatively short history, but the fact that many of the board and staff members of ARC and SOAB have been in place for a considerable number of years, is more telling. Thus, for example, ARC's former president had been in place since 1986,[874] and SOAB's current director has been so since 1991. In ARC's case, however, and as noted above, the rules for (re)appointment of its board members recently changed, and time will have to tell how this will impact the board's composition.

Governance

Transparency (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC CAN OBTAIN RELEVANT INFORMATION ON THE RELEVANT ACTIVITIES AND DECISIONS BY THE SUPREME AUDIT AND SUPERVISORY INSTITUTIONS (PUBLIC SECTOR)?

The legal framework contains some provisions to allow the public to obtain information about ARC's activities, but ARC is not required to make all its documents public. SOAB and Cft are not required to make their reports and recommendations public, but Cft is required to inform Parliament about its activities every six months, and some of Cft's recommendations are to be made public in the budgetary process.

ARC is to produce several types of reports, that is, reports on government's financial management and annual financial reports, annual reports on its own activities, reports on investigations at the request of Parliament as well as reports on – solicited or unsolicited – investigations on administrative integrity.[875] All these reports are for Parliament, and are declared public as soon as Parliament has received them.[876] In some instances, the law also contains some explicit time lines. Thus, ARC's reports on the government's annual financial reports and its own annual report are

[872] Also refer to Verton Advies N.V., Control and Advice Model Finances Pais Kòrsou. Draft report (*Controle en Advies Model Financiën Pais Kòrsou. Concept Report*) (Curaçao: Verton Advies N.V., April 2010), p.6.; Commission of experts, May 2010: 36. Compare Cft, PEFA-assessment financial management Curaçao. (*Rapport van bevindingen. PEFA inventarisatie financieel beheer*) (Curaçao, Cft: October 2011), p.9.
[873] See, for example, https://zoek.officielebekendmakingen.nl/stcrt-2012-6690.html [accessed 11 January 2013].
[874] The new president was appointed 1 February 2013.
[875] Country ordinance Court of Audit, Articles 22, 37, 30 and 32.
[876] Ibid, Article 47. This same article also rules that drafts of reports are to be kept confidential.

required to be sent to Parliament, the former a month and a half after ARC has received a copy of the internal auditor's report, and the latter before 1 July.[877] There are no regulations which require ARC's reports to be debated in Parliament, but Parliament is not allowed to approve the government's annual account if it does not have ARC's report on that account.[878]

ARC also produces notifications. Some are mandatory, such as notifications to the Executive or Parliament of any objections ARC has with respect to demonstrable errors or irregularities in, for example, expenditures. If consultations with the ministers involved do not have satisfactory results, Parliament is to be notified as well. ARC may – but is not required to – notify Parliament and the governor if it deems it to be in the county's interest. Information and findings which, by their very nature, are confidential may not be made public, but can be passed on to ministers, the governor or Parliament in confidence.[879]

Standard regulations on public access to government information do not apply to ARC, in the sense that ARC is not an administrative body with a duty of disclosure. However, a request to an administrative body may result in public disclosure if the documents requested are actually with that body and fulfil certain conditions.

The reports and activities of SOAB are prepared for internal government use. Consequently, with the exception of the auditor's report on Curaçao's annual account, reports and information on activities of SOAB are not required to be sent to Parliament or to be made public directly. However, in ways similar to ARC, a request to an administrative body may result in public disclosure.[880] SOAB is required to send its annual report and accounts to government, but there are no regulations requiring SOAB to make those documents publicly available.[881]

Cft is not required by law to make its reports and recommendations known to the general public, but in ways similar to ARC and SOAB, a request based on public access to government information regulations to an administrative body may result in public disclosure.[882] However, the law stipulates that draft budget(s) (changes) sent to Parliament are to be accompanied by Cft's recommendations on those drafts.[883] In addition, Cft is required – through the minister of the interior and kingdom relations – to inform both the Curaçao and Kingdom government and the Curaçao and Dutch Parliament every six months about its activities.[884]

Transparency (practice)

Score: 50

TO WHAT EXTENT IS THERE TRANSPARENCY IN THE ACTIVITIES AND DECISIONS OF THE SUPREME AUDIT AND SUPERVISORY INSTITUTIONS (PUBLIC SECTOR) IN PRACTICE?

ARC publishes all its reports and other documents sent to Parliament on its website, but most of its audit reports and annual reports have not been made public in proper time. SOAB does not make its audit and advisory reports public, nor does it publicise an overview of all

[877] Country ordinance Court of Audit, Article 37; Country ordinance Government accounts 2010, Article 50.
[878] Country ordinance Government accounts, Article 51.4 and the explanatory memorandum. Also refer to Article 85 of the Constitution.
[879] Ibid, Article 26, 27, 28 and 38.
[880] Cf. Country ordinance Government accounts 2010, Article 51.
[881] Charter SOAB, Article 16.3 and 16.4.
[882] Also refer to M.M. Bense, 'Board of financial supervision and general administrative regulations' (*Het College financieel toezicht en algemene bestuursrechtelijke regelingen)*, *Caribisch Juristenblad*, 2, 2012.
[883] Kingdom Act, Article 11.
[884] Idem, Article 4 and the explanatory memorandum.

its reports. It does, however, publish annual reports. It is relatively easy to obtain up-to-date information on Cft's activities and recommendations.

In practice, ARC sends all its reports to Parliament, and also publishes those reports on its website. Notifications are reported to be sent to Parliament and published in cases where action or reaction of ministers addressed was considered inadequate.[885] In addition, it was reported that there are no known cases of documents sent to the Executive the content of which was not made public at a later date. ARC recently launched a new website which also provides some information about the organisation, and is reported to be expanding this soon with more information about the legislative framework and other relevant regulations.[886] ARC does not yet work with press releases. On the negative side, up to now, most audit reports and annual reports have not been made public in proper time, in part because of a 'structural backlog' in producing and processing annual accounts. Moreover, information on ARC's own budget is accounted for in a separate chapter on High Councils of State in the country's budget, and as such is made available to the public in the course of the Curaçao accountability process. In practice, this means it takes some time before it is made public (also refer to the section on Role, below).

SOAB mainly provides information to government, ARC and Cft, and as such is not geared towards making its information public. The government itself also does not publish SOAB's reports.[887] SOAB does, however, as required, produce an annual report including a financial statement, which is reported to be widely distributed and made available on request. SOAB also has a website, but this website is currently under construction and cannot be accessed. The previous version provided general information about SOAB's internal organisation, its customers and activities. However, it was not up to date and did not include information on the relevant legal framework; nor did it provide access to SOAB's annual reports.[888] SOAB itself also does not publish a complete list of its reports issued, although ARC often does publish a list of SOAB's reports received by ARC in an annex to its own reports on government's accounts.[889]

Cft maintains an extensive, up-to-date website where additional information, for example, relevant rules and regulations, can be found.[890] In practice, Cft publishes all its reports and letters on its website; those to Parliament are published on its site immediately; those to government are reported to be published after a three-week period. Cft's six-month reports are sent to both the Curaçao and Dutch Parliament and always discussed in the latter. Information on Cft's own budget is part of the budget of the minister of the interior and kingdom relations and as such is made public in the course of the regular Dutch accountability process.

[885] See for example the notification found as Annex to ARNA, Report containing results of the investigation employment and salary payments personnel of the island territory Curaçao (*Rapport bevattende de uitkomsten van het onderzoek indienstneming en salarisbetaling personeel van het eilandgebied Curaçao*) (Curaçao: ARNA, June 2007).
[886] www.rekenkamercuracao.cw [accessed 13 May 2013].
[887] Cft, October 2011: 19.
[888] www.soab.cw [accessed 13 May 2013]. The previous website, as accessed 10 January 2013 did also contain more specific information, but this information concerned SOAB's reports when acting as advisor Corporate Governance. On this, see Pillar 4, Public Sector.
[889] See, for example, Annex 4 in ARC, Report of objections and remarks on the annual accounts 2004 to 2009 of the General Service of the island territory Curaçao (Curaçao: ARC, August 2011). A similar annex can be found on ARC's report on the annual accounts of the former country of the Netherlands Antilles 2008 and 2009. However, ARC's report on the annual account of 2010 of the island territory Curaçao does not contain such an annex.
[890] www.cft.an [accessed 10 January 2013].

Accountability (law)

Score: 75

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE SUPREME AUDIT AND SUPERVISORY INSTITUTIONS (PUBLIC SECTOR) HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS?

There are several legal provisions in place to ensure that ARC, SOAB and Cft are answerable for their actions, such as the requirement to regularly report on their activities and provide for independently-audited financial accounts. There are no possibilities to appeal against the final opinions of ARC and SOAB.

ARC has to present an annual report on its own activities before 1 July of each year to the governor and Parliament. This report is also required to mention specific objections ARC may have concerning government's financial management, findings and judgments of investigations on request of Parliament, and findings of investigations on administrative integrity. In addition, ARC's annual report is to include findings which may be relevant for Parliament's assessment of policies adopted.[891] With regard to its own financial management, ARC is required to account through the regular Curaçao accountability processes.[892]

There are some legal provisions which allow the administrative bodies audited by ARC to respond to objections ARC may have before ARC comes to its final opinion. In addition, ARC is required to provide the ministers concerned with information, as long as the nature of its work allows this.[893] However, there is no right of appeal to challenge the final audit results of ARC, as ARC is not considered to be an administrative body issuing decisions against which appeal is possible.[894] Because ARC's board members and employees are not considered to be civil servants, the general complaints provisions in place for civil servants also do not apply.[895] (But see below on accountants.)

As mentioned above, SOAB is required to produce an annual report including a financial statement accompanied by a report of an external accountant, and is to do so within six months after the reporting year ends. Government's approval of its accounts shall be deemed to grant discharge to both its board of directors and its supervisory board. In addition, SOAB is required to report in writing on each audit or advice requested by government, and SOAB and the executive are to confer every three months.[896] Because SOAB's internal audits are not considered decisions in administrative law, it is not possible to challenge SOAB's audit results in administrative proceedings. However, because SOAB is a public foundation, there are some general civil law provisions in case of serious doubts as to the board's adherence to the law and its charter, and the governance of the foundation.[897]

Cft is required to inform both the Curaçao and Kingdom governments and the Curaçao and Dutch Parliaments every six months about its activities. In addition, when asked, Cft is to provide information on its activities to the minister of the interior and kingdom relations, the Dutch minister of finance and the Curaçao Council of Ministers.[898] Cft is required to have its financial management audited by the internal and external auditor of the Dutch administration. The results of those audits are to be reported upon through the regular Dutch accountability channels between government and the Dutch Parliament.[899] There are no possibilities to challenge recommendations or other acts of

[891] Country ordinance Court of Audit, Articles 28, 30, 32 and 37.
[892] Cf. Country ordinance Government accounts 2010, especially Chapter 4, Section 4. Also refer to Articles 34 and 38.
[893] Country ordinance Court of Audit, Articles 27, 47 and 39. Also refer to Article 28.
[894] See country ordinance Administrative law, Article 3.
[895] That is, in the Court of Audit's Regulations for the Secretary and the Staff Regulations.
[896] Charter SOAB, Article 16; country ordinance Cooperation with SOAB, Articles 4 and 5.
[897] Civil Code, Book 2, Articles 54 and 55. Also: Article 271.
[898] Kingdom Act, Article 4.3.
[899] Board rules, Article 8.

Cft in an administrative court, but legal protection against instructions of the Kingdom Council of Ministers is available through appeals to the Crown (*Kroonberoep*).[900]

In case of chartered accountants employed at both ARC, SOAB and Cft, complaints may be filed at the *Accountantskamer*, the Dutch disciplinary institution which deals with complaints against individuals registered (not organisations). For accountants with similar qualifications, such as certified public accountants, similar disciplinary action is possible.[901]

Accountability (practice)

Score: 50

TO WHAT EXTENT DO THE SUPREME AUDIT AND SUPERVISORY INSTITUTIONS (PUBLIC SECTOR) HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS IN PRACTICE?

Existing provisions to ensure ARC's accountability are ineffective, in large part due to the fact that information reported by ARC is often available only several years after the reporting years. Accountability provisions for SOAB and Cft are generally implemented effectively in practice.

In practice, ARC's own annual reports are sent to the governor and Parliament as required, albeit, as mentioned, often with considerable delays. Although some improvement is to be seen, up to now ARC's annual reports have always covered several years, in one case as much as the period of 1991 to 2006. These reports provide information on, among other things, ARC's internal organisation, its audit activities and its outlook for the coming year. The annual reports usually also mention the results of ARC's investigations.[902] ARC also submits its financial information to the minister of finance as required. However, because up to now the country's overall annual accounts only reach Parliament many years after the reporting year, accountability is hampered since immediate follow-up actions are made impossible.[903]

In addition, the regular process to allow those audited to react to objections formulated by ARC has recently run into practical difficulties because the Island territory of Curaçao ceased to exist and with it the formal body audited. Thus, drafts of some of its reports dealing with the island territory published after October 2010, could not be sent to government.[904]

SOAB, as required, each year produces an annual report including an independently-audited financial statement and sends these documents to government. Similarly, each year Cft sends the minister of the interior and kingdom affairs the information required, including a financial statement which is audited through the regular Dutch auditing channels.[905] So far, there has been one appeal to the Crown to challenge an instruction of the Kingdom Council of Ministers to the Curaçao

[900] Kingdom Act, Articles 26 and 27. Cf. Bense, 2012.
[901] www.accountantskamer.nl [accessed 12 February 2013]. Also refer to Press notice Dutch Caribbean Accountants Association of 28 May 2012 (*Persbericht Nederlands Antilliaanse Vereniging van Accountants*), http://accountantcuracao.files.wordpress.com/2010/06/persbericht-van-de-nederlands-antilliaanse-vereniging-voor-accountants.pdf [accessed 12 February 2013].
[902] ARC, October 2012a: 17.
[903] Also refer to the section Role.
[904] See, for example, ARC, Report of objections and remarks on the annual account 2010 of the General Service of the island territory Curaçao (Curaçao: ARC, October 2012b), p.4.
[905] Also refer to https://zoek.officielebekendmakingen.nl/kst-33240-IV-1.html [accessed 10 January 2013].

government to adapt its budget. The Council of State rejected the larger part of the appeal, leaving the essence of the instruction intact.[906]

As for complaints, although the Dutch *Accountantskamer* does note an increase in complaints filed against accountants from the former Netherlands Antilles, there is only one known complaint filed against individual accountants employed at either ARC, SOAB or Cft.[907]

Integrity mechanisms (law)

Score: 75

TO WHAT EXTENT ARE THERE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF THE SUPREME AUDIT AND SUPERVISORY INSTITUTIONS (PUBLIC SECTOR)?

ARC has several specific provisions to ensure its integrity. SOAB has several provisions as well, but it could not be determined how operational they are. Cft's employees are all appointed by the Dutch minister of the interior and kingdom relations and as such have to abide by the general Dutch integrity rules for civil servants. Accountants employed in the supreme audit and supervisory institutions are covered by additional professional integrity rules.

There are several regulations in place to ensure the integrity of ARC, in addition to those noted in the section on Independence on additional functions and activities, and financial interests. Thus, before accepting office, the board members and secretary have to swear an oath or solemnly affirm that they have not given or promised anything to obtain their appointment and will not do so, and will not be bought. The oath also includes the positive obligation to abide by the Constitution and to exercise one's duties with honesty, punctuality and impartiality. Staff of ARC have to do the same.[908] ARC's internal regulations contain similar provisions related to the acceptance of gifts.[909] Moreover, members of the board and the secretary are not to be present at meetings or take decisions on any matter which concerns them or people with whom they are connected though close family or other ties, and are not to take part in investigations of, and decisions which concern, their accounts.[910] ARC also has a duty of confidentiality, and both board members and staff, as well as others involved, are required to keep secret all information that has become known to them in the performance of ARC's investigations, unless this information has to be used to draft a report and barring exceptions related to suspected criminal offences. A deliberate violation of this duty is a criminal offence.[911] There are no specific requirements related to pre-employment screening, but a background check may be part of the appointment procedure.

Accountants employed at ARC are bound to specific professional rules. Thus, for example, chartered accountants associated with the Dutch professional organisation NBA (*Nederlandse Beroepsorganisatie van Accountants*) are bound to the organisation's code of conduct, which incorporates international standards set by the International Federation of Accountants (IFAC) and espouses values such as independence and objectivity. The code also contains specific rules

[906] Decree of 2 November 2012 on the appeal of the Council of Ministers of Curaçao against the Decree of 13 July 2012 regarding the instruction to the Government of Curaçao to adjust the budget of 2012 taking into account the financial standards mentioned in Article 15 of the Kingdom Act Financial Supervision Curaçao and Sint Maarten, Dutch Bulletin of Acts, Orders and Decrees, 2012, No.535.
[907] Accountantskamer, Annual Report 2011 – Outlook 2012 (*Jaarverslag 2011 – Vooruitblik 2012*), p.17.
[908] Country ordinance, Articles 8 and 18.
[909] Staff Regulations and Regulations for the Secretary, as consulted at the Court of Audit on 13 May 2013.
[910] Ibid, Article 17.
[911] Country ordinance Court of Audit, Articles 38, 46 and 50 and the explanatory memorandum. There are additional provisions in the Staff Regulations and the Regulations.

pertaining to government accountants, and covers rules on conflicts of interests, additional jobs, gifts and financial interests.[912]

SOAB's charter states that those audited, those employed at accountancy firms and self-employed accountants cannot be appointed to its supervisory board.[913] SOAB also has a code of conduct, but it is very concise and made up of five slogans, such as, 'We work effectively and efficiently'.[914] It places emphasis on values such as professionalism, honesty, effectiveness and consistency. SOAB's charter does not contain provisions on confidentiality, but SOAB reports that, in practice, candidates are required to sign a 'statement of confidentiality' and a 'statement of independence'. Similar to ARC, there are no specific requirements related to pre-employment screening, but a background check may be part of the appointment procedure. SOAB's chartered accountants are bound to a more extensive set of rules, that is the professional rules mentioned above.[915]

Employees at Cft are all appointed by the Dutch minister of the interior and kingdom relations, some on the regular conditions in the Netherlands, and some on local conditions. All of them, and Cft board members themselves, have to abide by regulations concerning additional functions and activities, procurement processes and the receiving of gifts. Both board members and employees also need to take the oath, which includes a duty to keep confidential information required in the performance of their duties.[916] In addition, the Act stipulates that Cft's board members are to observe the country's provisions on confidentiality with regard to natural persons and legal persons.[917] Accountants employed at Cft are bound by their professional rules.

Integrity mechanisms (practice)

Score: 75

TO WHAT EXTENT IS THE INTEGRITY OF THE SUPREME AUDIT AND SUPERVISORY INSTITUTIONS (PUBLIC SECTOR) ENSURED IN PRACTICE?

There is some evidence of efforts to ensure integrity, some of which go beyond a reactive approach and aim to firmly establish rules of integrity in practice. However, the consistency and effectiveness of these efforts cannot be established.

In practice ARC, SOAB and Cft all appear to give adequate attention to integrity issues. Thus, for example, some pre-employment screening, including a testimonial of good conduct, is standard practice for ARC and SOAB. For some positions at SOAB, candidates are screened by the Security Service Curaçao (*Veiligheidsdienst Curaçao*). Also, integrity is reported to be an important part of ARC's personnel policy, and staff members are trained on integrity and corruption issues. Accountants are trained because their professional organisation requires this. Training of other employees is more reactive and in response to integrity-related incidents, although ARC is expected to increase its efforts with the assistance of a staff member dedicated to integrity issues.[918] SOAB also trains its employees, and has defined 'integrity' as a core competency of its staff, part of all job

[912] See http://www.nba.nl/Wet-en-regelgeving/Beroepsregels/HRA/ [accessed 7 February 2013].
[913] Charter SOAB, Article 10.4
[914] http://www.soab.an/Code_E.php [accessed 10 January 2013].
[915] This is also explicitly included in country ordinance Cooperation with SOAB, Article 7 as well as in the new draft ordinance.
[916] Although not all on the same legal basis. Relevant regulations for those employed on Dutch conditions are the Dutch *Algemeen Rijksambtenarenreglement* (ARAR), chapter VIIa; those employed on local conditions conform to the Regulation Terms of employment local personnel in Aruba, Curaçao and Sint Maarten (*Regeling Arbeidsvoorwaarden lokaal personeel in Aruba, Curaçao en Sint Maarten*), chapter 8. These regulations are similar, but not identical.
[917] Kingdom Act, Article 8.
[918] Also: Commission of experts, May 2010: 74.

descriptions and a part of assessment procedures.[919] Cft has appointed a confidant (*vertrouwenspersoon*) for members of its staff.[920] However, information to independently assess the consistency and effectiveness of these efforts is not available.

ARC, SOAB and Cft are all reported to have experienced one or two violations of ethical standards. Those instances largely concerned the exposure of confidential information, and were sanctioned with dismissal. Another case concerned harassment and ended in resignation.

Role

Effective financial audits (law and practice)

Score: 50

TO WHAT EXTENT DO THE SUPREME AUDIT AND SUPERVISORY INSTITUTIONS (PUBLIC SECTOR) PROVIDE EFFECTIVE AUDITS OF PUBLIC EXPENDITURE?

While some progress has been made, the effectiveness of audits of public expenditure remains limited, in large part because of delays or a lack of information beyond the control of the auditors. This is especially the case with respect to expenditures of public companies and public foundations.

ARC is authorised to perform both regularity audits and performance audits of public administration in the broadest sense.[921] In practice, ARC gives priority to the examination of the government's annual accounts and the monitoring of developments in its financial management.[922] Cft does not perform audits, but monitors among other things the budget process.

ARC is not expected to base its final judgment completely on its own research, and the law stipulates that it may use the results of internal controls, such as those of SOAB, on its own discretion and without prejudice to its own investigative powers.[923] In practice, ARC is of the opinion that part of the external control is to be performed by SOAB.[924] In those instances where SOAB has not audited an account, ARC may conclude that the accuracy, completeness and regularity of income and expenses remains uncertain and withhold its approval, which is exactly what it did with respect to the annual account over (most of) 2010.[925]

As mentioned above, over the years Curaçao – along with others within the former Netherlands Antilles – developed a serious backlog in the government's preparation of its annual accounts, which translated into backlogs in the audit institutions. The run-up to the constitutional changes went hand in hand with a catching up. SOAB speeded up its completion of the audits, but performed a limited audit only – that is, a marginal check on mistakes comparable to those made in earlier accounts – and provided the accounts with adverse opinions. ARC performed some research of its own but made significant use of SOAB's activities and in August 2011 was able to send its report on the accounts over 2004-2009 to Parliament.[926] In a report on Curaçao's financial management, based

[919] Also: Commission of experts, May 2010: 37.
[920] Board rules, Article 9.
[921] Country ordinance Court of Audit, Articles 22 and 29.
[922] See for example ARNA, July 2009: 8.
[923] Country ordinance Court of Audit, Article 24 and explanatory memorandum on Article 22.
[924] Cft, October 2011: 30.
[925] Cf. ARC, October 2012b: 5-6 and 44.
[926] ARC, August 2011: 5. Also refer to ARNA, July 2009: 11 and 23 and Cft, October 2011: 30.

on international norms known as the PEFA-framework, Cft labeled the scope and nature of the external control of the government's annual accounts as 'not adequate'.[927]

Not surprisingly, experience shows that the reports of ARC are made available to Parliament years after the reporting year ended. Parliament, in turn, only seldom approves the accounts, necessary to discharge ministers. According to ARC, the last account approved by Parliament was the 2001 account of the island territory. ARC labels this 'bad governance'[928]; the PEFA-report concludes that discussion in Parliament, because of the late delivery, by definition is 'ineffective'.[929] In a similar vein, budget proposals are seldom approved in time, as a result of which an important democratic principle, that is, government's formal mandate to public spending, is violated.[930]

As of 10 October 2010, the new regulations on government accounts contain some provisions which aim to ensure the timely drafting of the accounts, and internal and external controls.[931] Thus, SOAB is now to file its audit report six weeks after having received the annual account, and ARC is to report six weeks after having received SOAB's report. In practice, however, the deadlines incorporated in the law have not been met. In February 2013, the annual accounts over (the last part of) 2010 and 2011 had not yet been submitted to Parliament, and were being audited by SOAB.[932] In a recent letter to Parliament, ARC attributes this delay to, among other things, departmental failure to deliver requested information in time, the initial refusal of a formal minister of justice to audit the expenses of his department, and a significant delay in access to data on public revenues.[933]

Importantly, both ARC, SOAB and Cft are experiencing formal or practical difficulties in effectively auditing or supervising the many public companies and public foundations, or, more generally, 'public entities', in depth. Both ARC and SOAB have a mandate to audit the finances of the public entities. The former in so far as the country's financial interest – either directly or indirectly – is involved, the latter in so far as government has a financial interest or provides financial support, credit or guarantees.[934] Cft has a mandate to request information on the public sector from government, and may provide the government with recommendations on the financial state of affairs of public entities.[935] However, in practice ARC, SOAB and Cft have not been able to obtain the necessary information from public entities to adequately perform their tasks. Thus, for example, in 2007 ARNA already signalled that some public companies found it 'difficult' to provide information.[936] In 2012 Cft reports that regardless of multiple reminders and other efforts to obtain the information, it took several months to receive only part of the annual accounts requested.[937] More generally, information pertaining to public entities is difficult to come by,[938] in part because, as mentioned in Chapter VII.4 Public Sector, it is not sufficiently clear whether or not all public companies and public

[927] Cft, October 2011: 30; Cft, Report of findings. PEFA-assessment financial management Curaçao. (*Rapport van bevindingen. PEFA inventarisatie financieel beheer*). (Curaçao, Cft: February 2013), p.33. PEFA-framework refers to the Performance measurement framework of the working group Public Expenditure and Financial Accountability, see www.pefa.org.
[928] ARC, October 2012b: 20.
[929] Cft, October 2011: 10 and 32. Cft, February 2013: 14.
[930] See, for example, Cft, 24 December 2012, Unsolicited advice Draft budget 2013 Curaçao (*Ongevraagd advies ontwerpbegroting 2013 Curaçao*).
[931] Country ordinance Government accounts 2010, Article 50.
[932] Cft, February 2013: 35-36.
[933] ARC, Notification to Parliament, Update audits annual accounts (*Mededeling aan de Staten, Stand van zaken jaarrekeningcontroles*), 006/13/CUR (Curaçao: ARC).
[934] Country ordinance Court of Audit Articles 1, 19 and 41; also see Article 35 and the explanatory memorandum; Charter SOAB, Article 3f; Island ordinance Cooperation with SOAB, Article3.1f and Article 3.2.
[935] Decree of 2 November 2012, Section 2.3.7. Also refer to Article 8 of the Kingdom Act.
[936] ARNA, July 2007: 8.
[937] Cft, six month report Cft Curaçao and Sint Maarten, April 2011-December 2011 (Curaçao: Cft, February 2012), p.14-15.
[938] See for example Cft, six month report Cft Curaçao and Sint Maarten, January 2012-July 2012 (*Halfjaarsrapportage Cft Curaçao en Sint Maarten, januari 2012-juli 2012*) (Curaçao: Cft, August 2012); Cft, Six month report Curaçao and Sint Maarten, July 2012-December 2012 (*Halfjaarsrapportage Cft Curaçao en Sint Maarten, juli 2012-december 2012*) (Curaçao: Cft, January 2013). Alao: Council of State, RA/14-12-DIV, 31 January 2013. Cf. Civil Code, Book 2, Part 3 and 4.

foundations are required to publish their annual reports and accounts.[939] Public companies and public foundations are under no legal obligation to provide Parliament with information. And although the minister of finance does receive some information, this is not on a regular basis.[940]

Detecting and sanctioning misbehaviour (law and practice)

Score: 50

DO THE SUPREME AUDIT AND SUPERVISORY INSTITUTIONS (PUBLIC SECTOR) DETECT AND INVESTIGATE MISBEHAVIOUR OF PUBLIC OFFICEHOLDERS?

ARC and SOAB have investigative powers to detect misbehaviour of public officeholders. In practice, they have used these powers several times, but they do not audit, for example, (public) expenditures of public officeholders on a regular basis.

ARC is authorised to conduct investigations on the administrative integrity of both elected and appointed public officeholders,[941] and has several important powers to identify misbehaviour and corruption. Generally speaking, ARC's powers to examine the country's revenues and expenditures are not subject to any restrictions, including access to information regarding 'secret expenses'.[942] ARC is also allowed access to all places deemed necessary, except for private homes. If necessary, the police may be called for assistance.[943] SOAB has similar investigative powers.[944] However, neither ARC nor SOAB are able to sanction misbehaviour. If there is suspicion of a criminal offence, the law enforcement agencies, that is, the public prosecutor and the special police force will have to be notified.[945]

In practice, ARC does conduct audits into those areas within the administration which are particularly sensitive to possible misbehaviour and corruption or with large sums of public spending involved. Thus, for example, ARC published reports on the legality and efficiency of appointment practices and staffing costs within the administration, and the legality and efficiency of the provision of subsidies and residence permits. SOAB, for its turn, may very well identify possible misbehaviour and corruption in investigations commissioned by government, such as those into public contracting or quick scans into the financial state of affairs within public companies. However, neither ARC nor SOAB proactively set out to detect misbehaviour or corruption of elected or appointed public officeholders, and, for example, do not audit (public) expenditures of public officeholders on a regular basis. If they do, it is because they run into integrity issues in the course of their regular audits or because they are asked to do so by either Parliament or – in the case of SOAB – government. Thus, for example, in 2011 both SOAB and ARC looked into some parliamentary expenses, the former on request of government, the latter – in reaction to the former – on request of Parliament itself. Some members of Parliament are said to have described this course of events as a 'witch hunt',[946] and the results of ARC's study exonerated the accused officeholder.[947] The results of the SOAB study were not made public.[948] On the request of Parliament, ARC recently also looked

[939] Cf. Corporate governance code, 5.1 and 3.12. The Code is based on the Dutch '*Code Tabaksblat*', a corporate governance code for listed companies.
[940] Cft, October 2011: 18.
[941] Country ordinance Court of Audit, Article 32.
[942] Ibid, Articles 1 and 43 and the explanatory memorandum.
[943] Ibid, Article 48.
[944] Country ordinance Cooperation with SOAB, Article 6.
[945] Country ordinance Court of Audit, Article 46 and the explanatory memorandum.
[946] 'Parliament investigates use of credit card' (*Staten onderzoekt gebruik creditcard*), 15 March 2011, via www.rnw.nl [accessed 10 January 2013].
[947] ARC, Report use credit card by Secretary General in the period January 2008 to 1 April 2011 (*Rapport gebruik creditcard griffier in de periode januari 2008 tot 1 april 2011*) (Curaçao, ARC: 24 November 2011).
[948] SOAB's annual report over 2011does mention the study and its finalisation, but not its outcome.

into some integrity-related issues concerning the Central Bank of Curaçao and Sint Maarten (further discussed in Chapter VII.9 Supervisory Institutions (Private Sector)).

Improving financial management (law and practice)

Score: 50

TO WHAT EXTENT ARE THE SUPREME AUDIT AND SUPERVISORY INSTITUTIONS (PUBLIC SECTOR) EFFECTIVE IN IMPROVING THE FINANCIAL MANAGEMENT OF GOVERNMENT?

ARC, SOAB and Cft all can and do provide recommendations to improve financial management. To date, however, although some improvement is noted, the effectiveness of the recommendations has been limited due to a lack of follow-up.

Both ARC, SOAB and Cft have a responsibility to contribute to the improvement of financial management, and are authorised to give solicited or unsolicited advice. However, none of them have any formal sanctions to ensure implementation of their financial management recommendations,[949] although Cft does have the authority to recommend the Kingdom Council of Ministers to instruct the Curaçao government, for example to balance its budget to comply with budgetary norms, or to establish preventive supervision on the private contracting of loans.[950]

Prior to the recent constitutional changes, Curaçao (as well as other territories within the former Netherlands Antilles) had been experiencing significant problems in the field of government finances for years, including problems in field of financial management.[951] Part of the agreements between the Kingdom partners to reorganise constitutional relations was to work towards the improvement of the financial management based on 'implementation plans', the implementation of which is to be supervised by Cft.[952] In practice, with the establishment of Cft, the state of the government's financial management has received increased attention of the authorities, with several positive effects on the quality of financial management.[953] The instruction issued by the Kingdom Council of Ministers on the recommendation of the Cft is also considered to have spurred the Curaçao government to improve its financial management.

However, improvements notwithstanding, the government is not yet 'in control', and Curaçao's financial management in some areas still receives a unsatisfactory grade.[954] This is not so much due to a lack of recommendations on the part of ARC and SOAB, who have consistently provided the various Curaçao administrations with numerous suggestions to improve their financial management. Rather, the problem is generally thought to be a problem of follow-up. Up to now, government has complied with SOAB's and ARC's recommendations in only a few cases and/or with significant delays.[955] This may in part be attributed to ARC itself, which does not proactively follow up on its recommendations, other than within the context of audits of successive years. In 2010, ARC was recommended to work on a more powerful reputation to increase its effectiveness.[956]Also, it has been questioned whether SOAB's support – also in view of its many other activities – currently is

[949] Country ordinance Court of Audit, Articles 22 and 38, Charter SOAB, Article 3 and Kingdom Act, Articles 4.1d and 19. Cf. also the Decree of 2 November 2012, Dutch Bulletin of Acts, Orders and Decrees, 2012, No.535, Section 2.3.7.
[950] See, for example, Kingdom Act, Articles 13 and 16.
[951] See, for example, ARC, August 2011: 65 and ARNA, July 2007: 13. Also refer to the explanatory memorandum of the Kingdom Act.
[952] Cf. explanatory memorandum Kingdom Act, section 3.5.2. The plans are aimed at improvements such as the timely completion of the financial accountability, timely drawing up of the budget, drawing up multi-year policy plans and figures and organising a budget and obligations administration. They also include drawing up a corporate governance code for public companies and foundations.
[953] ARNA, July 2009: 23. Also ARC, October 2012a: 21.
[954] ARC, October 2012b: 44. Cft, August 2012: 14.
[955] Cft, October 2011: 9 and 31. Also see for example ARC, August 2011: 5.
[956] Commission of experts, May 2010: 72. Also: Verton Advies N.V., April 2010: 6; Cft, October 2011: 31.

sufficient to enable government to ‘gain control’.[957] Parliament, for its part, does not put significant pressure on government to improve its financial management. Reports are hardly ever substantively debated, and if they are, Parliament is said to question ARC’s findings rather than denounce acts of government.[958]

In 2012, after Cft’s PEFA assessment into the state of the financial management, government – in consultation with Cft – drew up a five-year improvement plan which now is a priority at the Ministry of Finance. Curaçao’s Budget 2013 reflects this, among others in the government’s objective to make Curaçao’s audited accounts publicly available as of 2014, also on the government’s website, in time and together with the audit reports on the accounts.[959] However, although this has led to a greater focus on financial management, so far, it has not yet resulted in the necessary information that would enable Parliament to adequately gain an oversight of the financial management of the Executive.

[957] ARC, October 2012b: 10. Also refer to ARC, August 2011: 12 and Cft, October 2011: 9.
[958] Cft, October 2011: 9 and 32; ARC, October 2012a: 17.
[959] Cft, August 2012: 14. Explanatory memorandum on the Budget 2013, p.282.

VII.9 ANTI-CORRUPTION AGENCIES

Curaçao does not have an anti-corruption institution in the sense of the definition used by Transparency International.

According to the National Integrity System assessment methodology, an anti-corruption agency is:

'A specialised, statutory and independent public body of a durable nature, with a specific mission to fight corruption (and reduce the opportunity structures propitious for its occurrence in society) through preventive and/or repressive measures.'

Such an agency should carry out three tasks: engagement in preventive activities in the fight against corruption; engagement in educational activities regarding the fight against corruption; and engagement in investigations regarding alleged corruption.[960]

As described in Chapter VI. Anti-Corruption Activities, the UN Convention against Corruption of 2003 was enacted by the Kingdom of the Netherlands in December 2006. In 2006 the Netherlands Antilles asked the Netherlands for permission (*medegelding*) to enforce the convention in the future. Curaçao is currently working on the required legislation. A new Penal Code was introduced in 2011, and a new Code of Criminal Procedure is in progess. Article 6 of the convention prescribes that signatory states should have a preventive anti-corruption body or bodies that implement(s) anti-corruption policies.[961]

Curaçao does not have an anti-corruption institution in the sense of the definition used by Transparency International nor in the sense of Article 6 of the convention.

[960] Description of anti-corruption agency to be found in Annex to the National Integrity System Toolkit via http://www.transparency.org/policy_research/nis/methodology [accessed 21 December 2012].
[961] United Nations Convention against Corruption, New York, 31 October 2003. Ratification on 30 November 2006 by the Kingdom of the Netherlands for the Netherlands, Tractatenblad, 2006, No.266. Also see Tractatenblad 2011, No.32.

ARTICLE 6 OF THE UN CONVENTION AGAINST CORRUPTION

Preventive anti-corruption body or bodies

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

(a) Implementing the policies referred to in Article 5[962] of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;

(b) Increasing and disseminating knowledge about the prevention of corruption.

2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialised staff, as well as the training that such staff may require to carry out their functions, should be provided.

3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

An independent national anti-corruption agency could be important in providing expertise and advice. The agency could contribute to the comprehensiveness and effectiveness of the National Integrity System of Curaçao by offsetting weaknesses in the system's pillars. If a pillar's own correction mechanisms fail or if other external correction mechanisms, including watchdogs such as the media or civil society, have limitations to effectively push for change, an anti-corruption agency may be able to do so.The agency could possibly also play a role in a whistleblower policy. The focus of such an agency should be on all forms of corruption in the (semi) public and private sector. It is necessary to clearly distinguish its powers and responsibilities from those of other agencies such as the Ombudsman (Chapter VII.7), and of Curaçao's special police force (*Landsrecherche)* (Chapter VII.5) which falls directly under the authority of the Procurator General and focuses on investigations of alleged criminal offences committed by civil servants (including politicians).

However, a new organisational body would only be useful if there is interest on the part of the government and the ministries. Political support for integrity, adequate empowerment, resources and autonomy to operate are conditions for an anti-corruption agency to be successful.

[962] Preventive anti-corruption policies and practices, Article 5.

VII.10 POLITICAL PARTIES

STRUCTURE AND ORGANISATION

Political parties are not mentioned in the Constitution, and they do not play an important role in Curaçao's legislative framework. It is only through elections that political parties are connected to constitutional law, as 'political groups'.[963] The Constitution does not assign any role to a political group in relation to Parliament or an individual member of Parliament.[964] Thus, the Electoral Code speaks of 'political groups' as organised groups that nominate candidates for parliamentary elections, and includes individuals who put themselves up for nomination. The ordinance on political party financing is also an ordinance on the finances of 'political groups'.[965] However, the functioning of the constitutional institutions is not possible without the input of political parties, whose elected members – candidates put forward – run many important institutions of the country.[966] In practice, members of Parliament are considered to be chosen in the name of a political party. Most of the time, they also act in the name of that political party in practice.[967]

Curaçao has a political system of proportional representation. Political groups or combinations of political groups not yet represented in Parliament require the support of a sufficient number of voters in order to participate in the elections.[968] Its political landscape is a dynamic one, with new political parties gaining momentum at the expense of older parties. Political parties hardly ever gain a majority by themselves, which requires coalition formation and allows smaller parties to make an impact as well. During the last elections, in October 2012, nine parties participated in the elections, six of which were elected in Parliament.[969] The oldest party currently represented in Parliament was established in 1948, the most recent ones in 2010.[970]

[963] On this, see L.J.J. Rogier, Principles of Caribbean Staatsrecht (*Beginselen van Caribisch Staatsrecht*) (Den Haag: Boom Juridische Uitgevers, 2012), pp.138-139.
[964] Also refer to the Country decree Publication Rules of Procedure Parliament of Curaçao (*Landsbesluit tot openbaarmaking van de Beschikking van de 10de oktober 2010 van de Staten van Curaçao, houdende vaststelling van de herziene versie van het Reglement van Orde voor de Staten van Curaçao*), Country Gazette 2012, No.50.
Article 14 links the concept of a 'fraction' to that of a 'political group'.
[965] Electoral Code Curaçao (*Landsverordening Kiesreglement Curaçao*), Official Curaçao Gazette 2010, No.87, Appendix d, Article 1; Country ordinance Finances political parties (*Landsverordening Financiën politieke partijen*), Official Curaçao Gazette 2010, No.87, Appendix I, Article 1.
[966] Rogier 2012:139.
[967] Council of State, RvA no. RA/30-12-LV Initiative draft country ordinance to amend the Electoral Code Curacao (*Initiatief-ontwerplandsverordening tot wijziging van het Kiesreglement Curacao*), Official Curaçao Gazette 2010, No. 87.
[968] Electoral Code Curaçao, Article 16.
[969] Three parties, Frente Obrero Liberashon 30 di Mei (FOL), Democratische Partij (DP) and Partido Laboral Krusada Popular, the latter two of which participated with a combined list, did not receive enough votes to gain a seat in Parliament.
[970] *Partido Nashonal di Pueblo* (PNP) was established in 1948, *Partido pa Adelanto i Inovashon Soshal* (PAIS) and *Movementu Futuro Korsou* (MFK) were both established in 2010.

ASSESSMENT

Capacity

Resources (law)

Score: 75

TO WHAT EXTENT DOES THE LEGAL FRAMEWORK PROVIDE AN ENVIRONMENT CONDUCIVE TO THE FORMATION AND OPERATION OF POLITICAL PARTIES?

The existing legal framework does not pose any significant hurdles to the formation and operation of political parties, although there is an electoral threshold. However, state support of political parties is not provided for.

There are no specific requirements for the establishment of political parties and there is no ban on specific party ideologies. The right of association is recognised in the Constitution and can only be restricted in the interest of public order.[971] The Constitution also recognises the freedom of assembly and the right to protest, which also can only be restricted for a limited number of reasons, for example to combat or prevent disorder or in the interest of public order.[972] A licence to assemble or protest is not required; a notification to the authorities suffices. This notification is required to state, among other things, the goal of the meeting or demonstration. However, the law explicitly states that no information on the content of the thoughts or feelings to be made public is required.[973] The Penal Code contains important provisions to allow for criminal proceedings against those who, alone or with others, engage in offensive, discriminating or hate-inciting expressions.[974]

In practice, most of Curaçao's political parties are associations with legal personality under private law. Although there have been occasions in which natural persons put up their own lists of candidates for nomination, all candidates chosen during the last elections were nominated by associations.[975] Parties have to follow the requirements for such associations as laid down in the Civil Code, but, because these are not very restrictive, they have a considerable amount of freedom as to how to organise and operate the political party.[976] (Also refer to the section on Integrity.)

However, new political parties that want to enter an election do have to meet some more specific requirements. Thus, those groups not represented in Parliament are required to be supported by a sufficient number of voters in order to participate in the elections[977] and to contribute NAf 2,000 (US$ 1,100).[978] They also have to fulfil some more detailed administrative requirements to make sure their list of candidates can be validated by the Supreme Electoral Council (*HSB – Hoofdstembureau*).[979] If the registration of their list of candidates is rejected by the electoral council, they may appeal against that decision. Proceedings are to be instituted before the Court of First

[971] Constitution of Curaçao (*Staatsregeling van Curaçao*), Official Curaçao Gazette 2010, No. 86, Article 10; also refer to Civil Code, Book 2, Article 24.
[972] Constitution, Article 11 and Country ordinance Public Manifestations (*Landsverordening Openbare manifestaties*), Appendix s to Official Curaçao Gazette, 2010, No.87, Appendix s.
[973] Country ordinance Public manifestations, Articles 4 and 5 and the explanatory memorandum.
[974] Penal Code, Book 2, Title V.
[975] See www.curacao-chamber.an [accessed 3 June 2013].
[976] See Civil Code, Book 2.
[977] That is, at least one per cent of the sum of the votes casts of the last elections. See Electoral Code, Article 16. Also refer to Rogier 2012:145.
[978] Electoral Code, Article 24.
[979] Ibid., Articles 25, 28 and 29.

Instance. Appeal against the decision of that court is not possible.[980] (Also refer to Chapter VII.6 Electoral Management Body.)

Private donations are allowed, albeit since October 2010 under some restrictions. Thus, for example, gifts from an individual, company or organisation to a political group and its candidates combined may not exceed NAf 25,000 (US$ 14,000) annually, and anonymous gifts are required to be deposited with the Curaçao Exchequer (*Landskas*).[981] Also, only gifts from Curaçao inhabitants or from Curaçao established legal persons and organisations may be accepted, and gifts from organisations subsidised by government are excluded.[982] Money received through fundraising activities, such as from ticket sales for dinners and parties, is not considered a 'gift', and is not limited to a specified maximum or origin.[983] There is also no cap on the total amount of money a political party can accept within any given period of time.

The state does not provide any support to political parties or candidates in order to prevent dependence on private financial donors and guarantee equality of opportunity. Thus, there are no financial subsidies or tax incentives for political parties, nor provisions for in-kind subsidies or equitable access to air time.

Resources (practice)

Score: 50

TO WHAT EXTENT DO THE FINANCIAL RESOURCES AVAILABLE TO POLITICAL PARTIES ALLOW FOR EFFECTIVE POLITICAL COMPETITION?

It is unknown what financial resources are available to political parties and it can therefore not be determined to what extent the funds available allow for effective political competition.

Because Curaçao political parties do not receive any kind of public funding, political parties are completely dependent on private funding. In practice, this may come from such diverse sources as membership fees, fundraising activities, sponsors or gifts.[984] It may also come from specific contributions, such as contributions based on the salaries or remunerations of those members elected or appointed in public office, or of those members appointed in the board of directors or a supervisory board of a public entity.[985]

There are bits of information about the amount of funds available to political parties for campaigning. For example, in 2005 a member of Parliament suggested that more than 90 per cent of the party's campaign money (a total of approximately NAf 200,000 or US$ 111,700) was donated by businesses via fundraising.[986] Another party more recently indicated it had receivedaround NAf 516,000 for its campaign, of which NAf 241,000 (US$ 134,600) was from fundraising and. NAf 262,000 (US$ 146,400) from donations.[987]

However, the actual, full resources available to Curaçao's political parties are unknown to the general public, and political parties are currently under no obligation to make any information on

[980] Ibid., Articles 30 to 32.
[981] Country ordinance Finances political groups, Article 16.
[982] Ibid., Article 10.
[983] Ibid., Article 7.
[984] Ibid., explanatory memorandum. Also refer to the different charters of the political parties, as mentioned elsewhere in this chapter.
[985] See, for example, MAN Rules of Procedure, Article 4; MFK Rules of Procedure, Article 3; PAIS Rules of Procedure, Article 3.4.8.
[986] 'Political parties depend on businesses' (*Politieke partijen afhankelijk van bedrijven*), 10 September 2005, Antilliaans Dagblad.
[987] 'PAIS provides public access to party finances' (*PAIS geeft inzage in partijfinanciering*), 9 November 2012 via www.versgeperst.com [accessed 19 May 2013].

their finances public. However, on the basis of information collected in our assessment, some observations can be made. First, the relative importance of the different private funds is likely to differ between the political parties, but the majority of funds is believed to come from fundraising activities, gifts and sponsors. Second, the financial basis of political parties does not appear to be a strong one, and it has been suggested that political parties in general are faced with large debts. Third, the amount of money involved in political campaigns is reported to have increased considerably, as has the importance of a media presence, such as a daily radio talk to inform the public about political ideas.

These observations combined suggest an increasing importance of and dependence on private financial donors, which is why the abovementioned regulations on political party financing have been introduced. These regulations are further addressed below. Here, it suffices to say that currently, according to some, the system in place allows for and has resulted in an unacceptable influence of those with money. The lack of transparency of political party finances makes it impossible to independently establish the facts. Whether in practice the amount of resources available to political parties is sufficient to allow for effective political competition, therefore, cannot be determined.[988]

There is one exception to the formal rule that political parties do not receive public funding. Sometimes state resources may be used by the ruling parties for party political purposes, thus providing an unfair advantage to those already in power. This can be particularly sensitive in the run-up to key processes, for example when debating constitutional changes. According to the Court of Audit, in the case of two information campaigns – one regarding the elections of 2007 and one regarding a referendum in 2009 – the Executive did not provide objective and reliable information, but used the campaigns for party political purposes in 'a dangerous way'. 'Because of this, a line was crossed which opens the door for the financing of party political (election) campaigns.'[989]

Independence (law)

Score: 50

TO WHAT EXTENT ARE THERE LEGAL SAFEGUARDS TO PREVENT UNWARRANTED EXTERNAL INTERFERENCE IN THE ACTIVITIES OF POLITICAL PARTIES?

There are several legal safeguards to allow political parties to function free of external interference, but the regulation of party finances, although an improvement, does contain important loopholes.

There is no specific legislation regarding state monitoring or investigation of political party operations. There are also no specific regulations allowing for mandatory state attendance of political party meetings, and political meetings can take place in private. The provisions that apply, apply in general. Thus, for example, the minister of justice or those appointed by him may access meetings or demonstrations open to the public, and may use force to enter if necessary. However, this is only allowed for clear and legitimate public interests such as public health or the combating or prevention of disorder.[990] Also, the Security Service Curaçao (*Veiligheidsdienst Curaçao*) is authorised to monitor organisations and individuals and it may use both general and specific

[988] Also refer to Oberon Nauta, Good Governance in 'The West'. Institutional and Social Constraints of Good Governance in the Caribbean Parts of the Dutch Kingdom (*Goed bestuur in de West, Institutionele en maatschappelijke beperkingen voor goed bestuur in de Caribische rijksdelen*) (Oisterwijk: Uitgeverij BOXPress 2011, 2011), p.67.
[989] ARC, Report information campaigns Island territory Curaçao regarding the elections of 20 April 2007 and the referendum of 15 May 2009 (*Rapport informationcampagnes Eilandgebied Curaçao inzake de verkiezingen van 20 april 2007 en het referendum van 15 mei 2009*) (Curaçao: Algemene Rekenkamer Curaçao), p.2.
[990] Country ordinance Public manifestations, Article 10.

intelligence tools. Again, however, it may only use these tools in case of a serious suspicion that they represent a danger for Curaçao's democratic legal order.[991] In theory, forced dissolution of political parties is also possible, as it is for all legal persons. Thus, a judge – on the request of an interested party or the Public Prosecutor – may rule to dissolve a party if, among other things, its cause or its activities are fully or partly in conflict with the public order, the law or its charter.[992] The assessment did not return any suggestions that these legal provisions contain important loopholes.

However, it was suggested that the current legal framework related to party finances – although an important step forward – is not yet sufficient to prevent unwarranted external interference, neither from the state nor from the private sector. The new country ordinance contains several provisions to prevent undue influence and rules out (most) gifts from abroad,[993] anonymous gifts, those above a certain (annual) threshold as well as gifts from state-subsidised organisations, reducing the risk of quid-pro-quo donations. However, although the explanatory memorandum suggests otherwise, contributions from public companies or public foundations are not prohibited, which still allows for the possibility of quid-pro-quo donations as well as an abuse of state resources to favour the ruling parties. More generally, as already mentioned in the chapter on the public sector, political parties' dependence on private donations also invites corruptive practices awarding government contracts in exchange of secret donations.[994] (Also refer to the section on Accountability.)

Independence (practice)

Score: 50

TO WHAT EXTENT ARE POLITICAL PARTIES FREE FROM UNWARRANTED EXTERNAL INFLUENCE IN THEIR ACTIVITIES IN PRACTICE?

There are no indications of state attempts to dissolve or prohibit political parties. The influence of party financers in practice cannot be assessed because the origin of most party finances is not publicly known.

In general, political parties are reported to be treated equally by the authorities, and political parties feel free to do their work and are equally able to campaign, provided they have been able to obtain sufficient financial resources to do so. And although over the years people who were active members of political parties have been arrested, these are not generally conceived to have been 'political arrests'. Also, there have been no reported cases of the state dissolving or prohibiting the activities of political parties in recent years.

However, Curaçao has experienced, like many other countries, a trend allowing for more heated political rhetoric and aggressive campaigning. Since 5 May 2013, it now also belongs to those countries which have seen political leaders assassinated. However, at the time of writing, the criminal investigations into the murder are on-going, and it cannot yet be determined what motivated those involved.

[991] Country ordinance Security Service Curaçao (*Landsverordening Veiligheidsdienst Curaçao*), Appendix j, Official Curaçao Gazette, 2010, No.87, Articles 2 and 3 as well as the explanatory memorandum under 2.3, 'Tasks of the Security Service Curaçao'. Also refer to Article 7.

[992] Civil Code, Book 2, Article 24. Also refer to the Penal Code, Book 2, Title V.

[993] The explanatory memorandum to Article 10 does mention that '(g)ifts from abroad are only allowed in as far as they are from the political organisation or related political organisations' (*verwante politieke organisaties*).

[994] KLPD, Crime analysis of Curaçao 2008 (Criminaliteitsbeeldanalyse van Curaçao 2008) (Zoetermeer: Korps Landelijke Politiediensten, Dienst IPOL, 2009).

In the tumultuous period just before the October 2012 elections, as mentioned earlier, there were some reports of intimidation.[995] When asked, several experts confirmed harassment and attacks on political party members by actors linked to other political parties. In addition, disputes between politicians are increasingly battled out via reporting, to such a degree that, in November 2012, the Public Prosecutor's Office Curaçao announced the installation of a special committee to review 'politically sensitive reports' and advise on whether or not to further investigate and prosecute.[996] (Also refer to VII.5 Law Enforcement Agencies and VII.6 Electoral Management Body.)

As for undue influence of party financers in practice, the important point to reiterate is that the origin of most party finances is not publicly known. Many of those interviewed in our assessment pointed out that this lack of transparency may imply a lack of independence of political parties as well.

Governance

Transparency (law)

Score: 0

TO WHAT EXTENT ARE THERE REGULATIONS IN PLACE THAT REQUIRE PARTIES TO MAKE THEIR FINANCIAL INFORMATION PUBLICLY AVAILABLE?

Curaçao's political parties and politicians are not required to make any information on their finances publicly available.

There are no regulations in place that require political parties to make their financial information publicly available. The country ordinance on the finances of political groups does not require parties to make their finances transparent to the public.[997] There is also no such obligation for associations in general.[998] Thus, neither annual reports and accounts, nor information about donations and gifts received by parties or politicians in general, or information about campaign donations is required to be made public.

In addition, because the two involved oversight bodies, the Supreme Electoral Council and the administration's internal auditor (*SOAB – Stichting Overheidsaccountantsbureau*), do not fall under the scope of the Act on public access to government information, and their reports are not required to be sent to government, it is unlikely that financial reports handed in by political parties can be obtained through a request on the basis of the freedom of information regulations. Also, the law stipulates that those involved in the execution of the regulations on political party finances are, with some exceptions, under the obligation to keep secret 'information of which he knows or reasonably can be expected to know the confidential nature'. Breach of this is a punishable offence.[999]

[995] See on this, for example 'VBC: "Intimidation is unacceptable"' (*VBC: 'Intimidatie is onacceptabel'*) via www.versgeperst.com [accessed 17 May 2013].
[996] 'Review Committee politically sensitive reports' (*Toetsingscommissie voor politiek gevoelige aangiften*), Press statement Public Prosecutor's Office, Parket Procureur-Generaal, 12 November 2012 via qracao.net. [accessed 15 March 2013].
[997] See Country ordinance Finances political groups.
[998] Cf. Civil Code, Book 2, Article 89. The board of an association is required to present to its general meeting for approval an annual report and annual account within eight months after the reporting year.
[999] Country ordinance Finances political groups, Articles 20 and 21.

Transparency (practice)

Score: 0

TO WHAT EXTENT CAN THE PUBLIC OBTAIN RELEVANT FINANCIAL INFORMATION FROM POLITICAL PARTIES?

Most political parties do not provide the public with information about their finances and none provide information about the source of their donations.

In practice, most political parties in Curaçao do not make any of their financial information available to the general public. There is one exception. One party, established in 2010, did publish aggregated information about its finances via the media. The information published concerned money received for and spent on its political campaigns, both in the run up to the elections of 2010 and 2012.[1000] However, the information provided could not be found on the party's website.[1001] Another party insisted that their supporters were to pay for the campaign material, such as hats and flags, and used unpaid volunteers to carry out the campaign.[1002]

None of the political parties that participated in the most recent elections released information to the general public about the source of the donations received.

As a result, and as mentioned above, there is an almost complete lack of transparency on the funding of political parties. Which person or company gave how much to whom how often remains unknown to the general public, and questions about relations between donations – from the 'private sector', 'families' and 'abroad' – and possible political favours in return as *quid-pro-quo* continue to dominate politics in Curaçao.[1003]

Accountability (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS GOVERNING FINANCIAL OVERSIGHT OF POLITICAL PARTIES BY A DESIGNATED STATE BODY?

Important provisions for financial oversight of political parties have been introduced. However, the current regulations contain loopholes and ambiguities which hinder effective oversight.

As of October 2010, Curaçao's political parties have been under the obligation to provide information on their finances to the Supreme Electoral Council. The country ordinance Finances political groups (*Landsverordening Financiën politieke partijen*) provides the legal framework. It regulates the acquisition of financial means as well as the financial administration of political groups in order, according to the explanatory memorandum, 'to advance the integrity of political groups'.[1004]

[1000] See, for example, 'PAIS provides for public access party finances' (*PAIS geeft inzage in partijfinanciering*), 9 November 2012, via www.versgeperst.com [accessed 17 May 2013].
[1001] www.partidopais.com [accessed 17 May 2013].
[1002] 'Wiels: need 10 years' (*Wiels: tien jaar nodig*), Antilliaans Dagblad, 22 October 2012.
[1003] Cf. P.C.M. Schotborgh-van de Ven, 'The "route of reproach": on the origins of fraud and corruption in the Caribbean part of the Kingdom' (*De 'verwijtenroute': over de achtergronden van fraude en corruptie in het Caribische deel van het Koninkrijk*), Justitiële verkenningen, Vol. 35, No. 5, 2009, p.93. Also refer to Commissie onderzoek Curaçao, Do it yourselves (*Doe het zelf*) (S.l.: Commissie onderzoek Curaçao, 30 September 2011), pp.31-32.
[1004] Country ordinance Finances political groups, general part of the explanatory memorandum.

Each year, before 1 April, political groups are required to send the Supreme Electoral Council their annual report. This report is to contain information on the composition of the board, the number of members (*contribuerende personen*), the amount of the annual contribution as well as the activities carried out by the political group.[1005] They are also required to send in their annual account which is to provide information on the group's financial position as well as a consolidated statement of its revenues and expenditures.[1006] The electoral council, in turn, is to send these annual accounts to the administration's internal auditor for auditing. The internal auditor is to report back with its advice to the electoral council.[1007] The council is also authorised to prescribe additional provisions with regard to the financial administration, annual reports and annual accounts of political groups, but these provisions require the government's approval.[1008]

In addition, political groups are required to maintain a permanent register including each gift of or worth NAf 5,000 (US$ 2.800)or more, also registering the date donations were made and names and addresses of donors. This includes gifts in kind and services provided, and also if those services are offered at a reduced price.[1009] Candidates for Parliament are also required to maintain such a register, but only need to do so from nomination day up until election day. (Also refer to Chapter VII.2 Legislature.)[1010] Each year, before 1 February, political groups are required to send the electoral council a copy of the previous year's register, together with a signed statement to confirm its accuracy. Candidates put up for election are only required to do so within a month *after* the elections.[1011] At the request of the electoral council, the internal auditor is to verify the accuracy of the information provided. The results of an audit are to be stored by the electoral council.[1012]

To supervise political parties' compliance with the regulations, the electoral council is authorised to exercise its supervisory powers any time it suspects an act in violation with the ordinance, and to enable effective control, political groups are required to maintain an up-to-date financial administration.[1013]

However, the current legislative framework in place contains some important loopholes and ambiguities. Thus, for example, as mentioned, money received through fundraising activities is not required to be registered as a gift, that is, separately, and is only to be included in consolidated statements.[1014] The explanatory memorandum states that this is to protect the privacy of those who gave their contribution in fundraising activities, presumably because it is assumed only small sums of money are then involved.[1015] Also, although anonymous gifts are not to be kept, there is no penalty if parties do not deposit those gifts with the Curaçao Exchequer.[1016] Furthermore, because political parties are only required to register gifts above a certain threshold, it is unclear how compliance with the absolute maximum of NAf 25,000 (US$ 14,000) per year is to be monitored without using a fine-tooth comb through the financial administrations of political parties.[1017] More generally, as also noted in the explanatory memorandum of the ordinance, the registration threshold may be abused to elude the registration duty. This is also true for donations in cash – presumably including pre-paid gift or money cards – which are allowed, although the explanatory memorandum

[1005] Ibid., Article 3 and the explanatory memorandum.
[1006] Ibid., Article 4.
[1007] Ibid., Article 5. Note however that although the ordinance itself requires the electoral council to do so, the explanatory memorandum suggests it may or may not do so, depending on whether it sees reason for further investigation.
[1008] Ibid., Article 6.
[1009] Ibid., Article 7 and the explanatory memorandum.
[1010] Ibid., Articles 8, 9 and 11.
[1011] Ibid., Article 12.
[1012] Ibid., Article 13; also refer to Articles 14 and 15.
[1013] Ibid., Articles 2 and 17 and the explanatory memorandum.
[1014] Ibid., Article 7.
[1015] Ibid., general part of the explanatory memorandum.
[1016] Ibid., compare Articles 16, 18 and 21. Also refer to the explanatory memorandum on Article 21 (labelled 22).
[1017] Ibid., Article 2.

points out a ban is to be preferred because the giving and receiving of cash gifts is difficult to monitor.[1018]

There are also weaknesses in the supervisory provisions. Thus, the electoral council itself does not have any means of coercion. If it discovers or suspects a political group or individual candidate has committed an offence, it is to report this to the Public Prosecutor's Office.[1019] Thus, for example, if political parties do not hand in their reports on time or fail to hand in their registers, the electoral council can do no more than to report it to the Public Prosecutor.[1020] A laddered approach to sanctioning is not available. Moreover, democratic control is not provided for, as the electoral council is not required to report – neither to government, Parliament nor the public – on its findings and on whether or not the political parties have complied with the requirements of the ordinance. Also, the fact that legislation exists is not yet well publicised, and several of those interviewed in the course of our assessment admitted they had not been aware of the legislation.

Accountability (practice)

Score: 0

TO WHAT EXTENT IS THERE EFFECTIVE FINANCIAL OVERSIGHT OF POLITICAL PARTIES IN PRACTICE?

At present, there is no financial oversight of political parties.

Transparency International asked all parties whether they had submitted both their financial reports as well as their gift registrations. Only one party responded, and indicated it 'had in the past submitted financial information'. Other parties did not reply.

To confirm whether this indeed implies that most political parties have not handed in the required information, Transparency International contacted the Supreme Electoral Council. When asked, the council indicated that only one party has submitted the required information over 2011, which is currently being audited by the administration's internal auditor. Other political parties have not submitted any information over 2011, and no parties have submitted information over 2012. No candidates have handed in their registers after the November 2012 elections. Also, as yet, the electoral council has not reported cases to the Public Prosecutor's Office.

[1018] Ibid., Articles 8 and 16 and the explanatory memorandum on those articles, and on 'Article 17'.
[1019] Ibid., Article 18.
[1020] Ibid., explanatory memorandum to Article 18.

Integrity mechanisms (law)[1021]

Score: 75

TO WHAT EXTENT ARE THERE ORGANISATIONAL REGULATIONS REGARDING THE INTERNAL DEMOCRATIC GOVERNANCE OF THE MAIN POLITICAL PARTIES?

Political parties have extensive freedom to shape their internal governance and differ considerably in the ways they have organised the election of their party leaders and political candidates. Parties also have different membership requirements.

As mentioned, most political parties are associations, and thus the general rules of decision-making under the Civil Code apply to them. This implies they have extensive freedom to shape their internal organisation, although there are a few legal requirements. For example, each party member must be allowed the opportunity to participate in the vote on the appointment of the board, either directly or indirectly, and members are to have at least one vote at the general meeting.[1022] The Code also requires the board of an association to annually present an annual report and accounts – audited by an external expert or internally, by members not part of the board – for approval to the general meeting of members.[1023]

Thus, regulating internal democratic governance is mainly up to the political parties themselves. Four out of the six political parties currently represented in Parliament have drafted somewhat elaborate provisions with regard to their internal democratic governance. For example, they may have provisions on the composition and responsibilities of party councils, district commissions and youth divisions.[1024] The charters of the other two parties are less specified, but do include more general provisions on membership, composition and responsibilities of the board and general members meeting.[1025]

The possibility to join a party as a regular member and influence its internal decision-making processes using the right to vote at general meetings, differs between the parties. One party only requires their regular members to be 18 years or older; two other parties require them to be inhabitants as well, but do not require Dutch nationality.[1026] Two parties require their regular members to be eligible to vote in Curaçao, and thus require members to be 18 years or older, residents of Curaçao and in possession of Dutch nationality.[1027] One party restricts regular membership to those born in Curaçao or those, who, directly prior to membership, have been resident for at least 10 years in a row. This party is also the only party that allows non-natural persons – associations established on Curaçao – to be a member of the party.[1028]

[1021] This section is based on the Charters (*statuten*) and Rules of Procedure (*huishoudelijke reglementen*) of the six political parties elected into Parliament in the elections of October 2013 *in as far as the latter were available.* Use is made of information deposited at the Curaçao Chamber of Commerce, information provided via website of political parties and information sent by one political party. Four out of the six Rules of Procedure could not be found on the internet and were requested from the political parties themselves. One party responded positively, and sent its Rules of Procedure.
[1022] Civil Code, Book 2, for example Articles 80 and 81.
[1023] Ibid., Book 2, Article 89.
[1024] Charters of MAN, PAIS, PAR and PNP.
[1025] Charters MFK and PS.
[1026] Charter MFK, Articles 5 and 14; Charter MAN, Article 4 and Rules of Procedure, Article 2; Charter PAIS, Articles 6 and 28.
[1027] Charter PAR, Articles 6 and 9 and Charter PNP, Articles 6 and 9. PNP also allows extraordinary members, that is, those living abroad, regardless of whether they are eligible to vote in Curaçao, to vote at general meetings.
[1028] Charter PS, Articles 7 and 14.

In addition, some parties allow honorary members to vote at their general meetings. Four of the six parties declare membership incompatible with membership of other Curaçao political parties.[1029] One party explicitly requires its members to be of good character (*onbesproken gedrag*).[1030]

All but one of the parties recently elected in Parliament have some provisions on the election of party leadership.[1031] Four of these parties require their political leader to be appointed by the general meeting of members of the party. Three of them mention 'an election', but differ in the degree to which their members are able to influence the nomination process and use, for example, a selection committee,[1032] an open procedure based on a function profile,[1033] or recommendations of a sufficient number of members.[1034] In one case, the political leader is required to be appointed by the general meeting, but this is to be on the recommendation of the board.[1035] One party's charter stipulates the board is to appoint the party's political leader.[1036]

As for the selection of candidates to put up for nomination, in three parties this is under the authority of the board members, whether or not on the basis of suggestions put forward by party committees.[1037] Two other parties require their more broadly-based party councils to do so, in one case based on function profiles adopted by the general members.[1038] None of the parties appear to provide for a decision-making role for the general meeting of members in the selection of candidates. In one case, the available documentation did not provide information on how candidates are selected.

Integrity mechanisms (practice)

Score: -

TO WHAT EXTENT IS THERE EFFECTIVE INTERNAL DEMOCRATIC GOVERNANCE OF POLITICAL PARTIES IN PRACTICE?

We asked 10 political parties to provide information to allow us to assess this indicator. Only one political party responded. There is thus presently not sufficient information to assess whether or not there is internal democratic governance of political parties in practice.

Role

Interest aggregation and representation

Score: 50

TO WHAT EXTENT DO POLITICAL PARTIES AGGREGATE AND REPRESENT RELEVANT SOCIAL INTERESTS IN THE POLITICAL SPHERE?

[1029] Charters MAN, PAR, PAIS and PNP.
[1030] Charter PNP, Article 6.
[1031] Charters MAN, MFK, PAR, PAIS and PNP. No such provision was found in the charter of PS.
[1032] Charter MAN, Article 14, Rules of Procedure, Article 18.
[1033] Charter PAIS, Article 20, Rules of Procedure, Article 3.4.
[1034] Charter PNP, Article 11.
[1035] Charter PAR, Article 21.
[1036] Charter MFK, Article 10.
[1037] Charter PAR, Article 16; Charter PNP, Article 14; MKF Rules of Procedure, Article 6.
[1038] MAN Rules of Procedure, Article 32; also Charter MAN, Article 27. PAIS Rules of Procedure, Articles 3.3.2 and 3.4.

Curaçao's political parties appear to be insufficiently able to ensure that the interests of all are adequately represented in the political sphere.

The most recent elections resulted in a comparatively high level of voter turnout. Approximately 76 per cent of those eligible turned up to cast their votes in the elections of October 2012, whereas voter turnout for both island and country elections in 2006, 2007 and 2010 constituted roughly 65 per cent.[1039] The high turnout was in part attributed to the fact that, prior to the elections, political parties themselves as well as civil organisations underscored the importance of (those) elections and put in extra efforts to mobilise people to cast their votes. The fact that people did in practice show up in comparatively large numbers suggests they indeed perceived a choice. In this sense, political parties do appear able to represent at least some of the relevant social interests.

However, those interviewed in the course of the assessment in general did not volunteer many favourable opinions about political parties. Several people pointed out that affiliation with a political party is often seen as a liability. Many try to avoid politics – or in some cases, even elections – afraid that its bad name will rub off. In large part, this is to be understood against the background of a dynamic political landscape, with changing coalitions in which today's small majority governing the country may be tomorrow's large minority in Parliament. According to several experts interviewed, in practice this has translated itself in a political system in which today's winners – backed up by their families, business partners, party financers and their electorate – try to make ample use of the legislative and executive power temporarily granted to further their own or other *specific* interests. When one or a few members of Parliament withdraw their support of the ruling government, the odds change, and new people, representing other specific interests, take over. In practice, of course, the situation is not as clear-cut, and there are many shades of grey, including several positive examples as well. Nevertheless, it was felt the rights of the large minority are insufficiently safeguarded, and Parliament is currently insufficiently able to adequately represent 'the entire people of Curaçao',[1040] as it is constitutionally required to do. Also, policies aimed at the longer term are difficult to realise, because they can easily be overturned once the next government moves in.

This is not always considered to be a problem because many in Curaçao see at least some fairness in a concept which allows some to profit in one period, and others in the next. However, more recently, several people do perceive a loophole in the current electoral system, and attribute the lack of political stability and concrete results to the fact that individual members of Parliament are constitutionally required to operate without mandate or instruction, and cannot be bound by party political rules. Others stress that it is not so much the electoral system but the democratic practice which fails. Thus, one expert interviewed signaled that Curaçao's parliamentary democracy has not evolved into a system which represents the voters. To obtain a more stable democratic system, what is lacking is not a constitutionally-embedded party political mandate and a tighter bond between coalition parties and the Executive, but a constructive awareness that today's majority can be tomorrow's minority, requiring those with legislative and executive power to take due account of the rights of minorities and, in doing so, the rights of all Curaçao people.

Anti-corruption commitment

Score: 25

TO WHAT EXTENT DO POLITICAL PARTIES GIVE DUE ATTENTION TO PUBLIC ACCOUNTABILITY AND THE FIGHT AGAINST CORRUPTION?

Corruption and the importance of public accountability are issues regularly addressed by

1039 www.kse.cw [accessed 19 May 2013].
1040 Constitution, Article 39.

political parties, including in recent elections. However, positive exceptions notwithstanding, due attention to effective implementation is lacking.

Public accountability and corruption are issues often mentioned in political campaigns of political parties in Curaçao, then[1041] and now. Several parties have corruption and integrity of government as recurrent themes in their party programmes and speeches, often linked to the notion that it is necessary to focus on these issues now because the previous government neglected them. Today, corruption and the lack of sufficient public accountability is considered to be one of the pressing problems facing the country.

Not surprisingly then, in recent political campaigns all political parties in one way or another addressed issues important to ensuring public accountability and the fight against corruption, although some political parties did so significantly more often than others. In fact, it is fair to say that many of the relevant issues have been addressed by one, several and sometimes even a large majority of political parties. Examples of issues highlighted in recent campaigns and on other political party platforms, from right across the political spectrum, are the promoting of good corporate governance and the safeguarding of the integrity of the Executive, including the provision of adequate screening, sufficient means to hold ministers responsible and the possibility to suspend a minister when suspected of a crime. Moreover, several political parties publicly denounced political patronage and stressed the importance of regulating political party finances to prevent financers of political parties claiming a 'return on investment'. Also, to strengthen accountability, several political parties have spoken out in favour of the possibility of a full constitutional review. The importance of anti-money-laundering and the fight against the financing of terrorist activities, the introduction of an anti-corruption law or agency and regular international evaluations of corruption in Curaçao, have also been addressed.

In some cases, these issues have successfully found their way through Parliament and the Executive. Thus, for example, as mentioned earlier in this report, Curaçao now *has* legislation aimed to safeguard good corporate governance, the integrity of the Executive and to account for political party finances. However, a sense of urgency to go beyond reacting to public outcry and to come to structural improvements in practice appears to be lacking sufficient support from political parties, Thus, there still are some important loopholes in several of the regulations adopted. Moreover, many of the issues that have mustered sufficient political support and are now incorporated in the Curaçao legislative framework are not yet effectively implemented. (Also refer to Chapters VII.1 Legislature and VII.2 Executive.)

[1041] See, for example, James Schrils, Emancipation and our political culture (*Emancipatie en onze politieke cultuur*) in: Emancipation and Acceptation (*Emancipatie en Acceptatie, Curaçao en Curacaoenaars*), 2003, p.126.

VII.11 MEDIA

STRUCTURE AND ORGANISATION

Curaçao has a large number of different types of media entities. Newspapers, radio and television stations and online news sites provide a variety of news angles to the public. There are six newspapers in the Papiamentu language (Extra,[1042] Bala, La Prensa, Nobo, Ulitmo Noticia and Vigilante), and two newspapers in the Dutch language (Amigoe[1043] and Antilliaans Dagblad). There are 29 radio stations in Curaçao, most of which broadcast in Papiamentu (including Z-86 Radio, Direct 107.1, Kòrsou FM, Radio Hoyer, Radio Krioyo, Radio Mas) and a few Dutch radio stations (Dolfijn FM, Paradise FM, Radio Hoyer 2). As far as we could determine in this assessment, all Curaçao print and radio media are in private hands.

Curaçao has two television stations, of which TeleCuraçao[1044] is a public-private partnership. The station is subsidised by the state-owned telecom provider UTS, but has over the years also become dependent on advertising revenue. The other television station, CBA, is privately owned. The Dutch-based Radio Netherlands Worldwide (RNW) has for years provided locally-produced content for its media partners in Curaçao. In 2010 this culminated in *Aworaki*, a Curaçao-based internet news site in Papiamentu and Dutch, which had to be downsized and taken over by the Dutch broadcast organisation NTR because a large part of RNW's public funding was cut in 2012.[1045] In addition, a number of journalists work as foreign correspondents for Dutch media from Curaçao at any given time. Along with Dutch journalists who fly into Curaçao for specific stories, the foreign correspondents provide a constant and direct link with Dutch media.

In addition to the traditional media consisting of newspapers, radio and television; internet and social media sites have become increasingly prevalent in Curaçaoan society, as a large group of Curaçaoans now use online news sites and Facebook to stay up on the latest news.[1046]

This chapter mainly discusses the two most popular and influential types of media in Curaçao, that is, newspapers and radio stations.

[1042] Morning newspaper since 1976.
[1043] Founded by the Catholic Church in 1883.
[1044] Founded in 1960
[1045] 'Changes broadcaster' (*Hervorming publiek omroep)* www.rijksoverheid.nl [accessed 28 May 2013].
[1046] Although there are no hard figures about social media use, experts confirm intensive use of social media in Curaçao.

ASSESSMENT

Capacity

Resources (law)

Score: 75

TO WHAT EXTENT DOES THE LEGAL FRAMEWORK PROVIDE AN ENVIRONMENT CONDUCIVE TO A DIVERSE INDEPENDENT MEDIA?

The legal framework pertaining to the existence and operations of independent media (public, commercial and community broadcasting) requires only a licence for broadcast media (radio and television), not for print media.

Curaçao's legal framework does not establish any significant hurdles to achieving a diverse and independent media sector. According to the Constitution there are no preventive restrictions on public expression.[1047] On setting up media entities there are no licence requirements for print media, but there are conditions for the establishment, operation and supervision of broadcast media. The rules are outlined in the country ordinance on telecommunications services.[1048] The ordinance requires a licence for the technical construction, maintenance and operation of a broadcast medium, such as radio and television. The licence is granted by Ministerial disposal for radio (*Ministeriele beschikking*) and National Decree for Television (*Landsbesluit*), in which the licence conditions are specified. Each licence includes the necessary frequencies required for the use of the licence. Registration,[1049] licensing and supervision of the broadcast media lie with the Bureau Telecommunication and Post.[1050]

For exercising the profession of journalist no permission of the public authorities is required. The profession of journalist is not regulated or protected by law. Any person can introduce himself as a 'journalist' or 'reporter'. There is no journalism education in Curaçao as yet. In 2010, the University of the Netherlands Antilles tried to start a four-year bachelor's degree course for those already working as journalists, those who finished secondary school and other interested parties. Unfortunately, although a large group had shown interest, the number of people who eventually volunteered was too small to start the training.[1051]

The Curaçao Media Organisation (CMO) is a foundation established in 2012 for the purpose of providing training and assessment in education for those employed in the media sector. In May 2012 the CMO signed a Memorandum of Understanding with UNESCO with the objective of establishing a bilateral agreement on developing apprenticeships and training within the media sector of Curaçao, and on the other hand to establish a longstanding relationship between CMO and UNESCO, with the objective of promoting local acknowledgement of the existence of UNESCO in Curaçao.[1052]

1047 Constitution, 2010, No.380, Article 9 and the explanatory memorandum.
1048 Country decree on telecommunication service, 2011, No.37 GT *(Landsbesluit, houdende vaststelling van de geconsolideerde tekst van de Landsverordening op de telecommunicatievoorzieningen).*
1049 Registration requirements www.btnp.org [accessed 20 May 2013].
1050 Website *Bureau Telecommunication and Post* www.btnp.org [accessed 18 May 2013]
1051 Education programme journalists cancelled, via www.versgeperst.com, 23 September 2011 [accessed 20 May 2013].
1052 Curaçao NATCom signs memorandum of understanding with Curaçao Media Organisation (CMO) on World Press freedom, 25 May 2012, via www.dutchcaribbeanlegalportal.com.

Resources (practice)

Score: 50

TO WHAT EXTENT ARE THERE DIVERSE INDEPENDENT MEDIA PROVIDING A VARIETY OF PERSPECTIVES?

Although there are different types of media sources, due to inadequate financial support and an insufficient number of trained journalists, the media do not provide a variety of perspectives covering the entire political and social spectrum. For both broadcast and print media, there is a financial threshold.

Interviewees described the print and broadcasting sector as diverse and pluralistic, covering a broad political and social spectrum. But in practice, this often concerns politically-based news, which makes up the majority of the news stories in Curaçao. However, according to one media expert, the media seem to cover the two extremes of the political spectrum, representing the views held over the constitutional referendum of 2009 when people were asked to choose between '*Si'* (approval of the negotiated agreements between Curaçao and the Netherlands) or '*No*' (disapproval of the on-going process of constitutional reform). Interviewees argued that while these two extremes (also called 'establishment' versus 'non-establishment') are amply covered by different media outlets, news angles and opinions that are more nuanced or 'in between' are likely to get less coverage. In this context, news which is deemed 'politically neutral', for example on music, sports, and art, is well covered in newspapers However, a true variety of perspectives is lacking as very few penetrating questions are asked by journalists.[1053]

Interviewees consider the situation regarding news media in Curaçao generally unsatisfactory. The number of different media entities is so high, that supply exceeds demand. According to experts, competition is often not determined by quality, but by the availability of resources. In terms of resources, the media face at least two challenges: inadequate financial support and an insufficient number of trained journalists, despite the presence of some who are qualified.

With regard to the first point, inadequate financial support, Curaçao media entities face considerable financial challenges. In the first place, there are financial hurdles involved in establishing a broadcast station or a newspaper. Purchasing equipment and licences can be costly, which means that in practice those that do are often dependent on financiers and/or advertisers. The print and radio sectors do not receive government funding. Interviewees consider that profitable media companies are rare, while most companies have a history of financial problems and struggle to survive. The large advertising market is a major factor preventing media organisations from going bankrupt. According to interviewees, this situation also makes the media dependent on advertisers. Furthermore, as one of the respondents stated, on the business side, some media organisations do not abide by the law by not paying taxes and social security for their employees, which leads to unfair competition.

With respect to the second point, an insufficient number of trained journalists, there are considerable problems in terms of professionalism of media employees. There are only a handful of journalists with a professional background in journalism. Most professional journalists are employed in the public sector or corporate business sector, in the marketing department, or as communication and public relations officers. Fortunately, other professionals with research skills, such as social scientists, are increasingly opting for a function in the media business. According to those interviewed, it is as yet uncertain if professional journalism training would remedy all the problems facing the Curaçao media today. They argue that most people already working as journalists believe they do not need additional training, while younger people tend to look to the Netherlands for education.

[1053] Froukje Sijtsma 'Media laws in Curacao' (*Mediawetgeving op Curaçao. Een onderzoek naar hoe hoofdredacteuren van Curaçaose nieuwsmedia denken over journalistieke zelfregulering in de vorm van een mediaraad),* University of Groningen, thesis, 2012: 47.

Interviewees consider, in general, that the threshold to work in the media business is very low. The salaries are generally also low, so people have several jobs to generate sufficient income. Indeed, some people work for different media companies, which carries the risk of conflict of interest. Interviewees also indicate that another challenge to the integrity of the individual journalist and the media as a whole, consists of the fact that many journalists also work for private companies, which makes it very difficult to report on these companies in a critical manner for fear of losing their extra income.

Due to time constraints and low pay, unsubstantiated press releases end up in radio and television programmes and newspapers without being thoroughly checked or investigated.[1054] Duplication of news items is common. In some cases integral reproduction of news items presented by another media takes place, for example, the narration during radio news bulletins of articles from newspapers. This undermines the accountability and independence of the media and, in particular, their role as a watchdog. One media expert argues that the lower level of education of most journalists also influences their ability to think critically. In addition, the small scale of Curaçao society makes it very difficult for journalists to take a critical stance, as they may fear 'repercussions' in their personal life or otherwise.

Interviewees agree on the fact that media is affordable for the public. To listen to the radio is free, while a newspaper costs less than a dollar.

Independence (law)

Score: 75

TO WHAT EXTENT ARE THERE LEGAL SAFEGUARDS TO PREVENT UNWARRANTED EXTERNAL INTERFERENCE IN THE ACTIVITIES OF THE MEDIA?

Comprehensive legal safeguards exist to prevent unwarranted external interference in the content supplied by the media. There is a potential risk of conflict of interest regarding the registration, licensing and supervision of the broadcast media.

Freedom of expression[1055] is enshrined in the Constitution and censorship is contrary to the Constitution.[1056] The government can intervene when the media engage in criminal acts; for instance, action can be taken when discrimination takes place in a newspaper, television or radio programme. In that case, freedom of expression is limited and it is possible to prosecute the people concerned.[1057] Libel (*smaad, smaadschrift en laster*) is also punishable in Curaçao.[1058] As far as we could determine in this assessment, there are no licensing requirements regulating the content of programmes and no rules that allow the government to control information disseminated by the radio and print media, as long as it is line with the legal order of Curaçao.[1059] Regarding the television media, there are very general and broad rules about content, but they are not very restrictive.[1060]

The registration, licensing and supervision of the broadcast media lie in the hands of one and the same minister, the minister of transport and communication. This minister also oversees the activities of the state-owned telecom provider UTS, which subsidises TeleCuraçao, one of two television stations. Interviewees consider this as a potential risk of conflict of interest.

1054 Sijtsma, 2012, p.47-47.
1055 The country is a party to the European Convention on Human Rights and subject to the jurisdiction of the European Court of Human Rights (ECHR) (Articles 7 and 10).
1056 Constitution, 2010, No. 380, Article 9.1 and 9.2 and the explanatory memorandum.
1057 Code of Criminal Procedure, 2011, No.86-87, Articles 2:60-263.
1058 Ibid, 2011, No.86-87, Articles 2:223-231.
1059 Country ordinance on telecommunication service, 2011, No.37, Article 39.
1060 Country ordinance Television (*Televisie Landsverordening*) P.B. No.33, 1971.

The Freedom of Information Act (*Landsverordening Openbaarheid van Bestuur*)[1061] provides journalists and others access to governmental information. Information will not be provided if, among other things, the interest of providing the information does not weigh up to the interest which concerns the investigation and prosecution of criminal facts, the inspection, control and supervision by administrative bodies or the observance of a private life.[1062]

Independence (practice)

Score: 25

TO WHAT EXTENT ARE THE MEDIA FREE FROM UNWARRANTED EXTERNAL INTERFERENCE IN THEIR WORK IN PRACTICE?

Private ownership of media and subsequent financial problems lead to dependence on the government, on the financiers and on revenue from advertising. This has severe consequences for the content of the news.

In practice, as far as we could assess, there is no direct government censorship, but according to media experts 'subtle influence' does occur in Curaçao. As noted above, media companies do depend to a large extent on financiers and the advertising market. Interviewees consider that the polarised political spectrum is tightly linked to the economic landscape, and therefore to businesses and advertising revenue. Those interviewed argued that state-owned companies (*Overheids NVs*) play a crucial role in this respect by, for example, issuing advertisements on a regular basis. As noted in the above, the indirect funding of state-owned companies and private companies pose a considerable risk to the independence of the media, while polarisation and partisanship of the media hinders the development of independent journalism.[1063]

To the extent that ownership is known, the owner is sometimes linked to either a political party or ideology or business. One media expert argues that in this sense many independent media consumers – a small group, as the population is often divided along the same lines as the politicians and businesses – choose to read papers and listen to radio stations with knowledge of this ideology or political leaning in mind. In addition, the media expert considers that without this knowledge, articles or news reports may at times seem unintelligible to people outside of Curaçao, as most of the 'news' is actually written 'between the lines'.

Transparency International didn't find evidence of systematic intimidation and harassment of journalists, although threats and physical violence against journalists, by for instance politicians, has occurred recently,[1064] as well as in the past.[1065] According to experts, a climate of fear exists amongst journalists interested in pursuing controversial topics, particularly those related to corruption. In this context, the area of investigative journalism is virtually non-existent in Curaçao (see section on Role, 'Investigate and expose cases of corruption practice', below). Experts also highlighted that Curaçaoan-based journalists often practice self-censorship – even when not actually threatened – to ensure a more pleasant climate to carry on with their personal lives on the island.

The Freedom of Information Act (*Landsverordening Openbaarheid van Bestuur – LOB*) gives individuals the right to public sector information. However, interviewees expressed their concerns regarding the effectiveness of the Freedom of Information Act (LOB) and the willingness of the government to provide information. Often the information requested by journalists is not provided in

[1061] Country ordinance Freedom of information Act (LOB), AB 2010, No.87.
[1062] Ibid, Article 11.
[1063] Sijtsma, 2012, p.29.
[1064] Car fire journalist on purpose, 28 May 2013, via www.kkcuracao.com [accessed 29 May 2013].
[1065] 'Journalist brutually pushed aside' (*Journalist hardhandig opzij geschoven)*, 20 September 2012 via www.kkcuracao.com [accessed 21 May 2013].

time – or not provided at all – by the governmental organisations. Additionally, the LOB is difficult to enforce, and appeal proceedings before the court take a long time and are quite costly.

According to interviewees, in fact, hard figures regarding even the most non-politically-related issues are hard to come by in Curaçao. One interviewee stated that, as a result of Curaçao's colonial legacy, very few people – in government service or otherwise – dare to make decisions or give out information.[1066]

Governance

Transparency (law)

Score: 25

TO WHAT EXTENT ARE THERE PROVISIONS TO ENSURE TRANSPARENCY IN THE ACTIVITIES OF THE MEDIA?

There are almost no legal provisions or individual rules and codes of media outlets which seek to establish transparency.

The most commonly-used legal business entity for a media organisation is the Limited Liability Company (*Naamloze Vennootschap – NV*),[1067] which means that the capital of a NV is divided into shares. There are no regulations by law that require NVs to make their financial information publicly available. Only large companies have the legal obligation to make the financial statements available to their stakeholders.[1068] A company is considered 'large' when more than 20 people are employed by the company and if the asset value of the company is more than five million guilders (NAf) and the net asset exceeds ten million guilders (US$ 5.6 million).[1069] Moreover, there are no regulations by law that require media entities to disclose their ownership or to make information about internal staff, reporting and editorial policies available to the public. There is also no such obligation for private companies in general. The names of the media directors of the company can be found in the public register of the Curaçao Chamber of Commerce and Industry. The broadcast companies have to provide various information to the Bureau Telecommunication and Post, the supervisor of the broadcast media.[1070] However, as far as we could determine in this assessment, except for the names of the licencees, this information is not public.

Transparency (practice)

Score: 25

TO WHAT EXTENT IS THERE TRANSPARENCY IN THE MEDIA IN PRACTICE?

In general, media outlets do not disclose relevant information on ownership or internal staff, nor on reporting and editing policies.

[1066] Myron Eustatius, Hopi skuma, tiki chukulati, organisation change in a political context (*Een nieuw land Curaçao*, Carib publishing SWP Amsterdam, 2012:49).
[1067] The mandatory regulations under private law are contained in Book 2 of the Civil Code.
[1068] Book 2 of the Civil Code, Article 121.1
[1069] Doing business in Curaçao guide, Curaçao Chamber of Commerce and Industry, 2013.
[1070] Country ordinance on telecommunication service, 2011, No.37.

The extent to which media companies are transparent about their ownership, decision-making and policies ranges from extensive transparency ('everybody knows who is the owner') to complete opacity. Media entities in Curaçao are not 'big', as described above, and do not publish any financial information. In general, media entities do not publish any internal information at all, such as annual reports and information on their ownership and editorial policies. Only a few media entities publish names of journalists and contact information on their website.

The information that broadcast companies have to provide to the Bureau Telecommunication and Post is, as far as we could determine in this assessment, except for the names of licencees, not public.

Accountability (law)

Score: 25

TO WHAT EXTENT ARE THERE LEGAL PROVISIONS TO ENSURE THAT MEDIA OUTLETS ARE ANSWERABLE FOR THEIR ACTIVITIES?

Broadcast media do have some provisions in place to ensure accountability on (mostly) technical aspects. There are no provisions for print media.

The broadcasting regulatory authority for 'Telecommunications and Postal matters' is overseen by the minister of transport and communication, and is supervised by the state secretary of transport and communication. One of the tasks of the organisation includes the enforcement of laws and regulations related to telecommunications, and ensuring that the infrastructures under its authority comply with certain standards. For instance, broadcast media are obliged to tape all their broadcasts.

Within the framework of the law the regulator has the ability to ask questions of the broadcast media, to review their annual reports and accounts, and to conduct an on-site inspection.[1071] If the broadcast entities do not comply with the requirements, the regulator can take different measures, such as imposing a fine and the withdrawal of the licence.[1072]

There are neither government regulators nor professional oversight bodies for print media. There is no media-organised oversight body (for example self-regulation).

In case of the spreading of false or erroneous information by the press about a person or legal entity, media companies can – at the request of the person or legal entity – be tried by a civil court.[1073] The court decision may include a deadline for correction and/or requirements for the manner in which the corrections should take place. In case of criminal insults, the person involved also has the possibility to report this to the public prosecutor, who can decide to start a prosecution.

[1071] Country ordinance on telecommunication service, 2011, No.37, Article 31a.
[1072] Ibid, Chapter IX, *Strafbepalingen.*
[1073] Civil Code Book 6, A.B. 2010, No.86-87, Title 3, *Onrechtmatige daad.*

Accountability (practice)

Score: 25

TO WHAT EXTENT CAN MEDIA OUTLETS BE HELD ACCOUNTABLE IN PRACTICE?

In general, media outlets do not have to answer for their activities to stakeholders*. *Court cases for rectification are uncommon.

Media experts consider that media companies are rather inactive in monitoring the journalistic conduct of their peers, and only rarely does a broadcaster or newspaper reporter account for their own work. According to a media expert, accountability by the media is exacted through various public channels such as internet forums and letters to the editor. The extent to which media companies account through these means is rather varied.

Overall, there are just a few media organisations who correct erroneous information. If necessary, they are forced by a judge to publish a rectification. For example, in April 2013, the Court of First Instance ordered one of the Curaçao Dutch newspapers to rectify an article published in June 2012 concerning businessman Robbie Dos Santos, one of the supposed financiers of the political party *Movementu Futuro di Korsou (MFK)*[1074] The newspaper published an article linking Dos Santos to a project of the fraudulent and convicted Dutch businessman, Chris van Assendelft van Wijk. The paper printed that Dos Santos participated in the project to launder money from bank accounts in the US. The Court ruled that the newspaper had to print within three days that 'the accusations were unsubstantiated'. An additional claim of ANG 20,000 (US$ 11,173) for damage restitution by Dos Santos was denied by the Court.[1075]

While formal requests to the court or even threatening to start a lawsuit for rectification are not uncommon, these situations are usually settled between parties before ending up in court. In that sense, the abovementioned case is not very common.

Integrity (law)

Score: 25

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THE INTEGRITY OF MEDIA EMPLOYEES?

Provisions to ensure the integrity of media employees are scarce.

While some media organisations do appear to have codes and rules concerning paid extracurricular activities, there is little to suggest that this is common practice. Interviewees argued that there are, in general, no provisions in place to ensure the integrity of media employees.

There does not appear to be a sector-wide code of conduct for the media in Curaçao, nor codes of conduct or ethics committees within individual media organisations. Foreign correspondents working on Curaçao are bound to more stringent rules, namely the code of conduct decreed by their news organisation in the Netherlands.

[1074] 'Robbie Dos Santos challenges AD to court' (Ad voor de rechter), 9 November 2012, via www.versgeperst.com

[1075] Verdict http://zoeken.rechtspraak.nl/detailpage.aspx?ljn=BZ7339 [accessed 20 May 2013].

One of the tasks of the broadcasting regulatory authority 'Telecommunications and Postal matters' includes ensuring that radio and television broadcasts adhere to ethical codes of communication; therefore a delay/interruption device must be installed, to censor non-acceptable expressions.

A minister of the political party PAR (*Omayra Leeflang*) launched an initiative in 2007[1076] to stop so-called 'call-in programmes' through which citizens voice their opinions – often in harsh and offensive terms – about local politics and society at large. The minister's media regulation (*mediawet*) also called for sanctions to be placed on radio stations which didn't abide by general moral rules. The regulation was not well received in the Antillean parliament and was never put into effect.[1077]

Integrity (practice)

Score: 25

TO WHAT EXTENT IS THE INTEGRITY OF MEDIA EMPLOYEES ENSURED IN PRACTICE?

There is a fragmented and reactive approach to ensuring the integrity of employees of media organisations.

According to interviewees, overall, broadcasters and newspapers do not seem to have integrity provisions in practice. No integrity provisions could be found on broadcasters' or newspaper's websites. However, there are some exceptions, for instance, the news site *Versgeperst* has drafted a code of conduct for journalists.[1078] This code states that a journalist is responsible for presenting news independently, fairly and honestly. This code may be related to *Versgeperst's* origin, the site having been an initiative of Dutch journalism students from the Netherlands, where such codes are more commonplace.

Overall, integrity in journalism is not a widely-discussed topic by the media themselves, although occasionally media companies report on the conduct of others. Due to particular incidents when, for instance, shocking pictures[1079] or offensive language appear in the media, topics such as integrity and ethics are discussed by journalists, but only on an irregular basis.[1080]

Attempts at self-regulation mostly have to do with moral issues, such as in the case of a boycott of bloody pictures taken at traffic accidents or crime scenes appearing on the front page. This boycott lasted several months, until one of the newspapers decided it was costing too much.

Respondents argue that in more recent years, journalists have become increasingly popular, with government appointing certain journalists on the board of supervisors of state-owned companies, which can be considered as a compensation for loyalty to the political party appointing them. This development has not raised many questions in public debate.[1081] According to a media expert, this is symptomatic of a culture in which the community accepts that journalists are openly entertained and offered gifts by private companies, for example during presentations of annual reports or promotional campaigns. The media experts stated that various Curaçao businesses organise annual activities for the press corps, where journalists have dinner, are taken on boat trips and given mobile

[1076] The deceased minister of Education, Stanley Lamp from the political party MAN, launched a similar kind of idea a few years earlier.
[1077] 'Media harm privacy' *(Media schendt privacy*) 22 March 2010, via www.versgeperst.com [accessed 27 May 2013].
[1078] Code of conduct Vers geperst, www.versgeperst.com [accessed 21 May 2013], see also: Media code not on the right track, *(Code slechte koers)* 26 September 2007, via www.abcourant.com.
[1079] Terrible pictures of death of two young girls in hotel 24 July 2012, via www.abcourant.com [accessed: 20 May 2013].
[1080] Ethics in Curaçao media *(Welingelichte kringen over ethiek in de media)* (RNW) 19 June 2010, via www.rnw.nl [accessed: 20 May 2013].
[1081] Sijtsma, 2012, p.31.

phones. Pictures of these outings subsequently appear in the local newspaper and do not attract criticism from society at large. On the other hand, these practices could also be seen as a way of promoting good communication and working relationships between the company and the media journalists, and as a token in recognition of the role of the media in the community.

Due to time constraints and low pay, journalists often do not rely on multiple sources. Press releases end up being used in radio and television programmes and newspapers without being thoroughly checked on both sides of an issue.[1082]

Role

Investigate and expose cases of corruption (practice)

Score: 25

TO WHAT EXTENT ARE THE MEDIA ACTIVE AND SUCCESSFUL IN INVESTIGATING AND EXPOSING CASES OF CORRUPTION?

In general, the media are not very active and successful in investigating and exposing individual cases of corruption.

The media are not very active in investigating and exposing individual cases of corruption, and there is almost no culture of investigative journalism. Investigative journalism requires long-term funding, availability to follow up on certain issues, and time. Due to the financially-dependent position of most media organisations in Curaçao, as noted above, many media-owners, editors or journalists do not wish to jeopardise existing funding for an as-yet unsure scoop, which they believe would not result in added status, reputation or respect from the Curaçaoan media consumers.

Family is not to be underestimated in this aspect, as the small-scale island society is very much geared towards matters of reputation and status. Family background and ties may be a substantial reason for a journalist not to follow up on certain stories, either to protect the family directly – if involved in certain questionable issues – or indirectly, if a journalist does not want to ‘rock the boat’ and bring shame to his or her family. This self-censorship is mostly practised when leads or allegations of corruption are related to people or institutions of the status quo, establishment or the ideology that the journalist, newspaper or station identifies with. However, a media expert indicates that when traces of corruption of ‘the other side’ are picked up, journalists, newspapers or stations are quick to publish or broadcast unsubstantiated ‘news’, which greatly influences the faith and opinion of the public at large in the political arena in a broader sense.

According to a media expert, news items based on in-depth journalistic research are rare and predominantly produced by the two newspapers in the Dutch language. Moreover, big scoops regarding corruption or other fraud-related issues are often brought by Dutch-based journalists, who do not live in Curaçao and therefore are not vulnerable to repercussions. The downside of this is that Dutch-based journalists often lack the complete understanding of Curaçaoan society that would enable them to better put stories in context. The reputation of Curaçao is thus often impaired by Dutch news media that gives a very simplistic and biased representation of the situation.[1083]

[1082] Sijtsma, 2012, p. 46.
[1083] Dutch media report sensational about Antilles (*Nederlandse media berichten vooral sensationeel over voormalige Antillen*) , 12 October 2012 via www.denieuwereporter.nl [accessed 28 May 2013].

Inform public on corruption and its impact

Score: 50

TO WHAT EXTENT ARE THE MEDIA ACTIVE AND SUCCESSFUL IN INFORMING THE PUBLIC ON CORRUPTION AND ITS IMPACT ON THE COUNTRY?

While some media outlets pay attention to informing the public on corruption and its impact, reports are often limited, biased and of poor quality.

On the positive side, different corruption-related cases have been widely exposed by the media, especially those at state-owned companies. The so-called '*Toko den toko*' issues, questionable contracts and tender procedures, irregular spending and transactions have been popular topics. Popular talk shows have contributed to raising the awareness level on corruption. On the other hand, it's much easier and less expensive to publish or broadcast 'quick news', which often turns out not to be true and greatly damages the reputation of business and individuals in the small-scale society, than to offer substantiated news to the public.[1084] This practice also negatively influences the faith and opinion of the public at large in the political arena in a broader sense.

Most of the media do not play a significant role in educating the public on corruption, its impact on the country and how to curb it. A media expert stressed that indeed, media organisations are more geared to being run as companies for profit than to prioritising their watchdog role. By being quick to publish unsubstantiated reports of corruption, fraud or crime, Curaçao media add to – if not help create – a climate of distrust in the society of Curaçao, as well as a negative image of Curaçao abroad.

Inform public on governance issues

Score: 50

TO WHAT EXTENT IS THE MEDIA ACTIVE AND SUCCESSFUL IN INFORMING THE PUBLIC ON THE ACTIVITIES OF THE GOVERNMENT AND OTHER GOVERNANCE ACTORS?

The ability of the media to inform the public about activities of the government is often undermined by the lack of information from different sources. The effectiveness of the Freedom of Information Act (LOB) is low.

In general, the media are quite active in keeping the public informed on regular activities of the government and governance institutions. However, there are concerns regarding the investigative means available to journalists because of the reticent attitude of governmental organisations. On the one hand, getting information or statistics or gaining access to a spokesperson can be very difficult for journalists. A media expert argues that this situation does not appear to be as a result of a deliberate code of secrecy, but seems for some media more rooted in the complex colonial past, where speaking out, being visible, and giving information could result in harsh punishment. Journalists or other outsiders trying to gain specific information can have a very difficult time. Moreover, as noted above, there are concerns regarding the effectiveness of the Freedom of Information Act (LOB) and the willingness of the government to provide information. (See Independence, practice.) At the same time, journalists with connections are able to gain insight into

[1084] Sijtsma, 2012, p.27.

highly-confidential reports from the Security Service Curaçao (*Veligheidsdienst Curaçao*) and personal bank statements of executives.[1085]

[1085] Highly confidential information reaches media (*Website publiceert gelekte informatie*) 13 September 2012, via www.versgeperst.com [accessed 20 may 2013].

VII.12 CIVIL SOCIETY

STRUCTURE AND ORGANISATION

Civil society is defined by Transparency International as the arena outside of the family, the state and the business sector, that is created by individual and collective action, organisations and institutions to advance shared interests. Curaçao citizens are active in numerous civil society organisations (CSOs) dealing with, amongst others, religion, culture, music, sports, charity, health and environment. The CSOs range in character from institutionalised and formal with a few hundred members and international ties, to informal, small-scale and local. The number and diversity of CSOs reflects the fragmentation and polarisation of civil society in Curaçao.

Traditional CSOs, like trade unions, have existed since 1922[1086] in Curaçao and have increased in number to more than 20 today. There are three umbrella organisations for unions,[1087] which are connected to international (union) organisations such as the International Trade Union Confederation (ITUC), the Trade Union Confederation of the Americas (TUCA) and Public Servants International (PSI). There is also a local Union Platform, called *Plataforma Sindikal*.

Faith-based organisations are also a significant component of civil society in Curaçao. The majority (73 per cent) of the population of Curaçao belongs to the Roman Catholic religion.[1088] The most important churches and faith communities are united in the umbrella organisation, the Council of Churches (*Raad van Kerken*). Several service organisations – including Rotary, the Lions Club and the Kiwanis – form another important element of civil society.

In 1985, a small group of people, including the former premier of the Netherlands Antilles, the late Miguel Pourier, formed a pressure group called Foundation Shared Interest (*Fundashon Kousa Komun*), which aimed to raise awareness about good governance. In recent years, more citizens have become active in publicly expressing their concerns about corruption on radio or television, through articles in newspapers, and using social media. Since Curaçao became an independent country in October 2010 there has been an explosion in the establishment of new watchdog CSOs.[1089] Although the composition of the groups is subject to change and coordination is often lacking, they all seem to have the same higher purpose of establishing good governance in Curaçao.

This chapter focuses mainly on CSOs in Curaçao which explicitly focus on achieving good governance. Business associations are not included in this chapter, but are mentioned in Chapter VII.13 Business.

1086 Bishop Verriet established the first union: Liga St. Telmo for harbour labourers.
1087 Central General Trahadonan di Corsow (CGTC), Sentral Sindikato Korsou (SSK) and Kamara Sindikal (KS).
1088 The other religions are: Protestant, Pinkstergemeente, Adventist, Jehovah's witnesses and other religions, CBS Census 2011. (Willemstad: Central Bureau of Statistics Curaçao, 2011).
1089 Such as: Kòrsou Uní, Grupo di Avila, Kòrsou 40, Pro Pueblo, Frente Sivíl, Defensa Sivil, Akshon Sivíl.

ASSESSMENT

Capacity

Resources (law)

Score: 100

TO WHAT EXTENT DOES THE LEGAL FRAMEWORK PROVIDE AN ENVIRONMENT CONDUCIVE TO CIVIL SOCIETY?

The existing legal framework does not establish any significant hurdles to the formation and operation of CSOs.

The Constitution[1090] guarantees the right to form and join public associations, while the Civil Code[1091] lays down the specific rules for establishing and registering such organisations. There are no formal limitations with regard to the purpose, programme, organisations, activities, budget and membership of CSOs except the protection of public order.[1092] By law there are no hurdles for CSOs to engage in advocacy and criticise the government. As noted under Chapter VII.10 Political Parties, the Constitution also recognises the freedom of assembly and the right to protest, which requires a notification to the authorities, with, inter alia, the goal of the meeting or demonstration.[1093] There is also freedom regarding the content of the activities,[1094] as long as it is in line with the legal order of Curaçao.[1095]

The most common legal forms of CSOs are associations and foundations under private law. According to figures of the Chamber of Commerce of Curaçao there are 282 associations and 3,489 foundations registered (reference date 31 December 2012).[1096]

Both are established by notarial deed executed before a civil law notary in Curaçao. Associations (*Verenigingen)* are membership-based and natural and legal persons are free to join. The registration and operation procedures are relatively simple. The association must be founded by two or more people and in the notarial deed of inception, the articles of association are inserted. It is not mandatory to have an association accomplished through a notarial deed; the association can also be informal.

Foundations (*Stichtingen*) have a board (*bestuur*) which manages a foundation but there are no members. The powers of the board are set out in the articles of association of the foundation. A foundation may also have a supervisory board, which supervises the board in accordance with the articles of incorporation.

Curaçao's CSO registration process has been described by the interviewees and respondents as 'rather user-friendly and cost-effective'. One interviewee added that some notaries in Curaçao are willing to charge only a social tariff when it concerns a CSO with a noble purpose. The procedure of incorporation and registration of a CSO takes approximately one week.

[1090] Constitution of Curaçao (*Staatsregeling van Curaçao*), Official Curaçao Gazette 2010, No.86 Articles 10 and 11.
[1091] Civil Code Book 2, the Foundation Articles 50-5, the Association Articles 70-89.
[1092] Constitution Article 10; also refer to Civil Code, Article 24.
[1093] Constitution, Article 11 and country ordinance Public Manifestations, Appendix to Official Gazette, 2010, No.87.
[1094] Country ordinance Public manifestations, Articles 4 and 5 and the explanatory memorandum.
[1095] Penal Code, Title V.
[1096] The number of the foundations is excluding The Private Foundation (*Stichting Particulier Fonds).*

The tax system is favourable for CSOs as long as they don't operate as a business for profit. The provisions for businesses to make donations to CSOs are also favourable as long these donations concern marketing. There are provisions in place to allow individuals to make tax-deductible donations, with a threshold of approximately two per cent of the taxable income.

Resources (practice)

Score: 50

TO WHAT EXTENT DO CSOs HAVE ADEQUATE FINANCIAL AND HUMAN RESOURCES TO FUNCTION AND OPERATE EFFECTIVELY?

Despite the financial help of donor organisations and other financiers, most CSOs tend to have inadequate financial and human resources, which leads to a certain degree of ineffectiveness. This issue is generally less of a concern for associations, such as unions, that collect membership fees.

There are a few well-known donor organisations in Curaçao which support local civil society initiatives with funds from the Netherlands. The Collaborative Foundations (*Stichting Samenwerkende Fondsen*) is one of them.[1097] In particular, they provide financial contributions to initiatives arising from society itself; projects that combat poverty and which offer better social and economic opportunities to inhabitants. In 2011 the Collaborative Foundations invested over € 1.5 million in more than 50 social initiatives in the Dutch Caribbean islands. Another well-known donor organisation in Curaçao is a foundation called *Prins Bernhard Cultuurfonds Caribbean*.[1098] The aim of this foundation is to support local activities, for example in the cultural, social and educational sector. Also *Bon Intenshon* is well known. This local private initiative wishes to bring the island to the attention of the greater global community by organizing, for example, international music and film events. Moreover, charitable projects to mitigate the impact of general poverty are all objectives of the foundation.[1099]

The foundations noted above are just three examples of donor organisations in Curaçao. In practice there are more, but an overview of the number of donor organisations and their activities is lacking. This in general applies to the civil society in Curaçao. Due to a lack of empirical research it is also difficult to assess how strong the volunteer and membership base of CSOs overall is in Curaçao. According to a union expert, the participation rate of workers with unions is about 28 per cent in Curaçao.

Despite the existence of donor organisations in Curaçao, several CSOs are generally not eligible for financing from such donors because they don't meet their objectives and/or requirements. They are largely dependent on membership fees, income from fundraising activities (for example car washes, lotteries and parties), and private and business funding. Interviewees stated that it takes a lot of time to get financing together. One watchdog-CSO expert experienced that financiers are in general willing to invest small amounts of money, but don't want to commit themselves to large amounts. Business experts argued that local businesses donate sometimes hundreds of thousands of guilders to CSOs. Also, other interviewees from the business sector stressed the fact that for reasons of insufficient government investment in 'basic needs' – such as education, child care, sports and culture – the private sector is frequently approached for financial assistance. Without its financial help, many CSOs would have much less to spend.

[1097] The Collaborative Foundations consists of Stichting Kinderpostzegels Nederland, the Oranje Fonds, Skanfonds, the Innovatiefonds Zorgverzekeraars and the Sluyterman van Loo Foundation, via www.samenwerkendefondsen.org [accessed 30 April 2013].
[1098] See www.pbccaribbean.com [accessed 30 April 2013].
[1099] See www.fundashonbonintenshon.org [accessed 30 April 2013].

According to the interviewees, due to the income of membership fees, the unions have sufficient financial sources in general. There are several unions with members who receive a salary paid by the employer and they may spend their time on trade union work.[1100] In 2012 the government donated approximately NAf 200,000 (US$ 111,730) (to the union umbrella organisations in Curaçao: the Central of Unions (*Centrale van Vakbonden – SSK*) and the General Central of Employees (*Algemene Centrale van Werknemers – CGTC*).[1101] The donation aims to fund the organisation of a training programme for executives of the local unions to improve their knowledge of, for example, law, policies, economics, leadership and communication.[1102]

But oOn the other hand, many other CSOs in (amongst others) the social, cultural, environmental and educational field, do not have sufficient financial sources. They thrive on the personal commitment of a few volunteers. Because of inadequate funding, there are always pressing needs that cannot be fulfilled. Many CSOs find it difficult to attract skilled staff, to retain and train professional staff, or to set their priorities. Government grants for CSOs do exist in Curaçao, for example for sports and social activities, but these are almost never sufficient to cover all costs.

Independence (law)

Score: 100

TO WHAT EXTENT ARE THERE LEGAL SAFEGUARDS TO PREVENT UNWARRANTED EXTERNAL INTERFERENCE IN THE ACTIVITIES OF CSOs?

A number of laws and provisions exist to prevent undue external interference or the threat of political or arbitrary dissolution, which cover important aspects of independence.

As noted under Chapter VII.10 Political Parties, there are several legal safeguards enabling CSOs to function free of external interference. There are no regulations stipulating state membership of government boards or requiring mandatory attendance at state meetings. There is no specific legislation regarding state monitoring or investigation of CSO operations. Although the government and the Security Service Curaçao (*Veiligheidsdienst Curaçao*) may access meetings or demonstrations open to the public, and may use force to enter if necessary, this is only allowed for clear and legitimate public interests[1103] and in case of a serious suspicion that they represent a danger for Curaçao's democratic legal order.[1104] As is the case for all legal persons, forced dissolution of CSOs is also possible, if for instance its cause or activities are fully or partly in conflict with the public order, the law or its charter.[1105] (Also refer to Chapter VII.10 Political Parties.)

The assessment did not return any suggestions that these legal provisions contain important loopholes.

[1100] Facilities arrangement for unions and shop stewards (*Regeling ter beschikkingstelling en Faciliteitenregeling voor Vakbondsbestuurders en Shopstewards*).
[1101] '200,000 guilders for training labour unions' (*200.000 gulden voor training vakbonden*) 6 April 2012, via www.versgeperst.com [accessed 30 April 2013].
[1102] Besides the donation of the government , the union umbrella organisations contributed NAf 60,000,- (ca. US$ 33,520).
[1103] Country ordinance Public manifestations (*Landsverordening openbare manifestaties*) 2010, Article 10.
[1104] Country ordinance Security Service Curaçao (*Landsverordening Veiligheidsdienst Curaçao*) Appendix j to Official Curaçao Gazette, 2010, No.87, Articles 2 and 3 as well as the explanatory memorandum under 2.3, 'Tasks of the Security Service Curaçao'. Also refer to Article 7.
[1105] Civil Code, Article 24. Also refer to the Penal Code, Title V.

Independence (practice)

Score: 50

TO WHAT EXTENT CAN CIVIL SOCIETY EXIST AND FUNCTION WITHOUT UNDUE EXTERNAL INTERFERENCE?

Although there have been no examples of direct government interference in the operations of CSOs, there have been several reports of recent attempts to intimidate (individual members) of watchdog CSOs.

CSOs in Curaçao are generally able to operate without undue interference by the authorities. Instances of direct government pressure, such as suspension of CSOs or arrest of CSO activists because of their work, do not take place. On the negative side, interviewees consider that, in practice, people often fear association with watchdog CSOs. For instance, they fear losing their job or being excluded from public contracts. (Also refer to Chapter IV. Country Profile.) As a result of this, according to respondents, members of watchdog CSOs are often financially-independent people or retired people who no longer depend on employment income.

The authorities do not interfere openly in the internal affairs of CSOs, but in a few cases one or more ministers openly showed their antipathy. For instance, in 2012 the Prime Minister hit out at pressure groups when they intended to organise a demonstration. [1106] Another example concerns the debate on the report of the Commission Rosenmöller[1107] in Parliament. The Commission investigated the causes and developments that have led to a situation where the integrity of public officials and the functioning of important institutions in Curaçao have been questioned. To gather information the Commission conducted 40 interviews, where the interviewees remained anonymous. During the discussion of the report in the Parliament, a minister accused the people who had spoken with the Rosenmöller Committee to be traitors to their country.[1108] On account of these accusations a former Island Council member initiated a pressure group called 'I'm also one of the 40', also called the Group of 40. The group openly expressed support for the respondents of the committee. Several protest demonstrations were organised and the Group of 40 requested that Parliament reopen the discussion on the Rosenmöller-report Committee. This recommendation received substantial support, for instance, from the political party *Pais*, but also from *Kòrsou Uní*, a CSO of social partners on the island.

Moreover, during the campaign period of the elections in October 2012, there were cases of intimidation (verbal attacks) and violence by politicians against members of watchdog CSOs.[1109] Some CSO leaders experienced inexplicably high tax assessments which they interpreted as intimidation by the government. Furthermore, during the tumultuous period just before October 2012, the advertising billboards of watchdog CSOs were destroyed several times.[1110] The perpetrators are not known.

Authorities also have been criticised for attempting to influence CSOs' activities through 'discriminatory' policies. For instance, interviewees considered cooperation of the government within *Kolaborativo*, the social dialogue[1111] platform of Curaçao established in 2003, to be non-existent. This platform, which is organised according to the International Labour Organization (ILO) protocol,

[1106] Prime minister hits out at pressure groups (*Premier haalt uit naar actiegroepen*), 20 April 2012, via www.kkCuraçao.com [accessed 31 May 2013].
[1107] Do it yourselves (*Doe het zelf*), Commission of research, 30 September 2011.
[1108] Addressing traitors by the constitution (*Landverraders bij grondwet aanpakken*) 15 October 2011, via www.rnw.nl [accessed 31 May 2013].
[1109] 'Intimidation is unacceptable' (*Intimidatie is onacceptabel*), 9 October 2012, via www.versgeperst.com [accessed 31 May 2013].
[1110] 'Ads Frente Sivil destroyed again', 24 September 2012, via www.Curaçaochronicle.com [accessed 9 May 2013].
[1111] The term 'social dialogue' reflects the Constitutional principle of tripartism of the ILO (International Labour Organization).

includes the national and central representations of the unions, the Association of Business of Curaçao (VBC) and the Chamber of Commerce and Industry. According to those interviewed, in the past *Kolaborativo* collaborated regularly with the government on several social and economic topics of the country. With the changes in the political landscape in 2010, *Kolaborativo* has experienced a lack of cooperation of the government. According to respondents, cooperation was denied by the first cabinet of Curaçao.[1112] Recently, the interim government, Cabinet-Betrian, requested *Kolaborativo* to conduct an urgent national dialogue process to determine stakeholder input regarding the age-pension system (*Algemene ouderdomsvoorziening – AOV*) and the Health Care Coverage *(Ziektenkosten Voorziening – ZV*). Although the report was completed, it was never reviewed or the social partners called to participate in dialogue about their proposal, conditions or observations. As one of the interviewees said, 'In recent years, democratic participation is not recognised in practice in Curaçao'.

Governance

Transparency (practice)

Score: 25

TO WHAT EXTENT IS THERE TRANSPARENCY IN CSOs?

The overall level of transparency of Curaçao CSOs is inadequate. The internal organisation, source of funds, and activities of CSOs are often unknown to the general public.

CSOs are not required by law to publish their annual reports and financial statements.[1113] The actual resources of CSOs are unknown to the general public, as those organisations are under no obligation to make public any information on their finances. Curaçao's regulatory system has raised concerns about the risk of fraud and abuse within the non-profit sector, particularly the facilitation of the financing of terrorism. The Caribbean Financial Action Task Force (CFATF) has noted that it lacks measures to ensure accountability and transparency in the non-profit sector. CSOs are not obliged to declare how much they collect or where money is spent.[1114]

In practice CSOs, to varying degrees, disclose relevant information on their activities to their members. Some unions inform their members about their activities, annual reports and financial statements in a direct way, while others inform their members through their 'shop stewards'[1115]. According to those interviewed, certain types of CSOs, such as trade unions, generally appoint an audit committee (*kascommissie)* which supervises and controls the financial budget.

Several respondents interviewed noted that CSOs sometimes fail to make their work transparent due to their organisational weakness, a result of not enough active members, insufficient financial resources and professionalism. On the positive side, there are CSOs, including several service organisations such as the Rotary Club Curaçao and the Lions Club, but also the Foundation for a Clean Environment on Curaçao *(Stichting Schoon Milieu Curaçao – SMOC)* and the watchdog CSO, Civil Action Foundation (*Fundashon Akshon Sivíl – FAS),* with extensive websites. Some of these

[1112] 'Social partners sue Curaçao at ILO *(Sociale partners klagen Curaçao aan bij ILO),* via http://nieuws.willemstad.net [accessed 10 May 2013].
[1113] Cf. Civil Code, Book 2, Article 89. The board of an association is required to present to its general meeting for approval an annual report and annual account within eight months after the reporting year.
[1114] CFATF, Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism, Curaçao, (s.l.: CFATF, June 2012), pp.213-219.
[1115] 'Shop stewards' are representatives of unions in different sectors.

websites include the articles of incorporation, the names of board members, relevant reports and public letters.[1116]

In the period just before the October 2012 elections, watchdog CSOs engaged in an extensive campaign with billboards, radio spots, media performances and newsletters. The campaign was aimed to influence the voting behavior of the people of Curaçao. According to those interviewed, the CSOs opted not to disclose information about the funding sources of those campaign activities. Certainly in that period, there was a growing call for transparency in the financing of CSOs in Curaçao public and political debate.

Accountability (practice)

Score: 50

TO WHAT EXTENT ARE CSOs ANSWERABLE TO THEIR CONSTITUENCIES?

CSO boards and members are only partially effective in providing oversight of CSO management decisions.

Most CSOs observe principles of democracy and accountability in their formal internal structures. The law ensures that within associations all members are given an opportunity on an annual basis to control the financial position and business activity of its executive committee.[1117] Regarding foundations, if there are doubts about the compliance with the statutes, the law gives the right to key stakeholders and the public prosecutor to ask the board for information any time.[1118]

On the positive side, an expert interviewed noted that effective accountability mechanisms are often imposed by donors. The expert argued that donors are generally successful in performing this function, and the CSOs usually report to them and provide them with the relevant documents, because they would otherwise face the prospect of being denied funding in the future. Also, unions succeed, to varying degrees, in answering for their decisions to key stakeholders and members. For instance, some unions do exert strong supervision of board decisions, while others do not. A union expert emphasised that the level of professionalism of the union is decisive here.

On the negative side, several CSOs face a number of dilemmas when it comes to a professional approach and transparent and timely reporting. The preparation of a good annual report takes considerable time which is often needed for other core tasks, and is often not available in the case of the many volunteer-led CSOs.

Integrity (practice)

Score: 25

TO WHAT EXTENT IS THE INTEGRITY OF CSOs ENSURED IN PRACTICE?

In practice most CSOs in Curaçao are based on trust, and they have a rather reactive approach to ensuring integrity of their staff and members.

1116 See, for example, www.stichtingsmoc.nl and www.akshonsivil.com [accessed 8 May 2013].
1117 Cf. Civil Code, Book 2, Article 89.
1118 Ibid. Article 54.

Beyond the limited requirements of registration, there are no legal requirements to ensure the integrity of CSOs. There is no sector-wide code of conduct. Service clubs often have access criteria, a balloting commission, and there are often self-regulating mechanisms. Individual organisations and umbrella bodies are responsible for implementing their own codes of conduct and reporting mechanisms. Due to a lack of available data, it is not clear what proportion of Curaçaoan CSOs had implemented codes of conduct or whistleblower safeguards for members and/or key stakeholders. As far as Transparency International could determine, the major CSOs are not professionalised to the extent that they have formalised integrity provisions.

The watchdog CSOs stated that they did not have codes of conduct, but agreed on the need to have one in the future. One union agreed to have a code of conduct, while another union-respondent considered that the values of the members of the unions have 'gone backwards' in recent years. According to this respondent, 'sometimes unions support dishonest members'.

Role

Hold government accountable (practice)

Score: 50

TO WHAT EXTENT IS CIVIL SOCIETY ACTIVE AND SUCCESSFUL IN HOLDING GOVERNMENT ACCOUNTABLE FOR ITS ACTIONS?

CSOs are active in holding the government to account; however it is difficult to measure the impact of activities.

Some CSOs, particularly those dedicated to economic development and labour force (for example, unions), take part in and influence the outcome of discussions on national economic and social policy with the government. Curaçaoan CSOs are also involved in both advocacy and the lobbying of individual ministers and government officials in an effort to influence the passage and drafting of legislation. An example of this concerns the introduction of a screening procedure for ministers. In 2011-2012 watchdog CSOs continuously asked for attention to be focused on integrity issues. *Akshon Dushi Kòrsou*[1119] organised a petition and collected data – such as court verdicts – about ministers who were, in the eyes of the CSO, unfit to be a minister. The CSO requested that Parliament start an investigation into the integrity of members of the cabinet. The majority in Parliament opposed the idea, and several members of Parliament accused the pressure group of making unfounded allegations against cabinet members. However, after severe and ongoing criticism, prior to the elections of October 2012, a new and stricter legislation was introduced to ensure the integrity of (candidate) ministers.[1120] (Also refer to Chapter VII.2 Executive.) Although it is difficult to measure the impact of activities of the CSOs, they played a significant role in the initiation of this new law.

On the other hand, the Foundation for a Clean Environment on Curaçao *(SMOC)* has been striving for more than 12 years to limit the life-threatening pollution affecting 20,000 people caused by the oil refinery in Curaçao. The foundation has tried by means of information and pressure from society to have the Government of Curaçao enforce the Nuisance Licence it granted in 1997 to the refinery. As noted already in Chapter VII.3 Judiciary, for the past eight years the CSO has also initiated and

[1119] *Akshon Dushi Kòrsou* is part of umbrella organisation *Frente Sivil*
[1120] Country ordinance Integrity (candidate) ministers. Country Gazette 2012, No.66.

carried out various court proceedings to achieve this. According to a CSO expert, because the government has systematically tried to boycott the court proceedings and several times has failed to carry out the court rulings, the effectiveness of the actions of the CSO are limited.

Policy reform (practice)

Score: 75

TO WHAT EXTENT IS CIVIL SOCIETY ACTIVELY ENGAGED IN POLICY REFORM INITATIVES ON ANTI-CORRUPTION?

In recent years a limited number of CSOs have provided input to on-going anti-corruption discussions. The role of these watchdog CSOs changed from 'talking and writing' to a more active advocacy-based approach, using legal instruments to hold the government accountable. The watchdog CSOs became more visible and gained support from other CSOs.

It is illuminating that it took a comparatively long time in Curaçao, until the country got its status of autonomy in 2010, for watchdog CSOs to become visible in Curaçao. Although watchdog agencies such as *Kousa Komun* tried since the 1980s to raise awareness about good governance, they never organised large public meetings or demonstrations to demand it. As one interviewee stated, 'in those days, certain groups in society, the intellectuals, didn't go on the street to raise awareness'. However, things started to change in the early 2000s. A few years ago, a demonstration was organised against criminality, and more recently an anti-corruption demonstration was organised by the politician, the late Helmin Wiels. After October 2010, the subject of corruption became a more 'public issue'. Since the installation of the first Government of Curaçao, Cabinet-Schotte, and in particular, since the recent murder (May 2013) of political leader Wiels, discussions about democratic values such as freedom of speech have become very topical. As one of the respondents said, 'Democracy in Curaçao is more alive than ever'.

Moreover, the Council of Churches (*Raad van Kerken*) has for many years been asking for attention to be focused on good governance and anti-corruption. The Council undertook several initiatives in relation to those topics. In the run-up to the elections of October 2012 (and also fora long time before), the board of the Council called for peace and respect, asked for commitment to the fight against corruption in all ranks of society, and for unity and peace on the island.[1121]

During 2011 and 2012 a pressure group, Civil Front (*Frente Sivil*) – an informal association – became well known. According to interviewees, the aim of the group is to improve the quality of public administration, government corporations and institutions. The pressure group organised numerous demonstrations and campaigns against Cabinet-Schotte and used large advertising signs with different messages concerning the way the government ruled the country. Furthermore, organisations, including some unions, explicitly showed support for the activities of *Frente Sivil* and *Akshon Sivil*.[1122]

In July 2012 *Frente Sivíl* founded a Civil Action Foundation (*Fundashon Akshon Sivíl – FAS)*.[1123] This pressure group receives judicial support of several lawyers in Curaçao and makes use of legal instruments to reach its goals. According to experts, the aim of *Fundashon Akshon Sivíl* is to reach good governance by using legal instruments. *Fundashon Akshon Sivíl* initiated for the first time in Curaçao a civil inquiry request.[1124] This concerns the policy and state of affairs at four state-owned

[1121] 'Message Council of Churches Curaçao', *Mensahe di konseho di iglesianan Korsou pa elekshon di oktober 2012*, via www.qracao.com [accessed 6 May 2013].
[1122] Frente Sivil receives support from the unions (*Frente Sivil krijgt onverwachts steun van vakbonden en dwingt cabinet Schotte snelle aftocht uit Fort Amsterdam*) 21 July 2012, via www.news.caribseek.com [accessed 8 May 2013].
[1123] See www.akshonsivil.com [accessed 8 May 2013].
[1124] Civil Code, Book 2, Article 271.

companies (*Aqualectra, Curaçao Oil (Curoil) NV, Curoil Gas NV and the Refineria di Kòrsou NV*).[1125] The Public Prosecutor's Office subsequently studied the case and, based on its findings, decided to present the request to the Joint Court of Justice, which has the power of decision. The inquiry request will be dealt with in Court at the beginning of June 2013.[1126]

Besides the initiatives mentioned above, internet and social media activities on anti-corruption were introduced. For instance, the Curaçao whistleblower group 'Let's fix Curaçao now' (*Ban Drecha Kòrsou Awor*) started to collect information about corruption on the island in order to publish it on the website 'Curaleaks'.[1127]

[1125] Civil inquiry request, via www.akshonsivil.com [accessed 8 May 2013].
[1126] 'Civil inquiry request in court 5 June' (*Civile enquête wordt 5 juni behandeld*), 28 May 2013, via www.kkCuraçao.com [accessed 30 May 2013].
[1127] Website Curaleaks https://curaleaks.org/Exposing corruption in Curaçao [accessed 1 June 2013].

VII.13 BUSINESS

STRUCTURE AND ORGANISATION

According to figures from the Curaçao Chamber of Commerce and Industry, 38,054 entities – including companies, foundations and associations – were registered in Curaçao as of 31 December 2012, which concerns 40 per cent international registrations and 60 per cent local registrations.[1128] This number of local companies implies an average of one entity for every seven residents of Curaçao. In 2012, just over 3,000 new entities were registered, which is 13 per cent less than in 2011.

In the national accounts, financial intermediation has the largest share in gross value added of the private sector (24 per cent) because of the prominent presence of the international financial services industry in Curaçao. Financial intermediation is followed by real estate, renting and business activities (18 per cent), trade (14 per cent), transport, storage and communications (10 per cent), and manufacturing (9 per cent). It should be noted that tourism is one of the main economic activities in Curaçao, but it is not considered a separate sector in the national accounts. Therefore, tourism activities are spread over various sectors, the most important of which are: hotels and restaurants, trade, transport, storage and communications, real estate, renting and business activities.[1129] According to information from the Central Bank of Curaçao and Sint Maarten, tourism was the largest contributor (21 per cent) to the foreign exchange income of 2011.[1130]

The Curaçao Chamber of Commerce and Industry keeps a database of Curaçao businesses, and provides information and services to local and international companies with an interest in doing business in Curaçao. The Chamber is officially represented in several official bodies where financial, social and economic policy and developments are discussed and determined.[1131]

Curaçao has a very active business society community. There are a number of business (lobby) groups and organisations in Curaçao, for example, the Business Association Curaçao (VBC) which represents about 265 businesses and the Small and Medium Enterprises Association (ADECK) which represents about 200 businesses. Three-quarters of the companies in Curaçao are medium-sized enterprises. The financial sector is represented by, amongst several others, the Curaçao International Financial Services Association (CIFA), the Curaçao Bankers Association (CBA) and the Association of International Bankers (IBA). The tourist sector is represented by the Curaçao Hospitality and Tourism Association (CHATA). Other business associations are the Antillean Contractors Association (AVV) and the Free Zone Association (Frezacur). All associations organise business-related events for their members. Some also undertake research or provide training for their members, and lobby government on their behalf.

In the same waym employees of businesses are generally organised per sector in labour unions. As noted in Chapter VII.12 Civil Society, the labour unions are organised into three federations of labour unions: Central General Trahadonan di Corsow (CGTC), Sentral Sindikato Korsou (SSK) and Kamara Sindikal. In 2013, approximately 28 per cent of workers were members of a union.

Besides the business and employee organisations and the branch of industry organisations, professional organisations play an important role in the private sector. That holds, for example, for

[1128] Curaçao Chamber of Commerce and Industry Reporting and statistics, 2013, based on country ordinance Commercial register (*Handelsregisterbesluit)*, Official Curaçao Gazette, 2010, No.86-87.
[1129] CFATF, Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism, Curaçao, (s.l.: CFATF, June 2012).
[1130] Presentation Annual report Central Bank Curaçao and Sint Maarten 2011, slide 34.
[1131] See www.Curaçao-chamber.an.

the Curaçao Bar Association, the Dutch Caribbean Accountants Association (DCAA), the Antillean Lawyers Association (AJV), the Association of Antillean Tax Consultants (VAB), the Association of Compliance Officers of Curaçao (ACCUR), the Human Resource Network Curaçao and the Association of Dutch Caribbean Economists (ADCE).

ASSESSMENT

Capacity

Resources (law)

Score: 50

TO WHAT EXTENT DOES THE LEGAL FRAMEWORK OFFER AN ENABLING ENVIRONMENT FOR THE FORMATION AND OPERATIONS OF INDIVIDUAL BUSINESSES?

The laws pertaining to the establishment, operation and closing down of individual businesses are generally clear and straightforward, but a number of aspects are bureaucratic.

According to the respondents, the legislative framework for the private sector is generally business-friendly. The limited liability company (*Naamloze Vennootschap – NV*) and the private limited liability company (*Besloten Vennootschap – BV*)[1132] are, besides the sole proprietorship (*Eenmanszaak*),[1133] the most common[1134] formal structures for the conduct of business in Curaçao.[1135]

The start up of a limited liability company (NV) or a private limited liability company (BV) to undertake business activities requires three steps. The first step concerns the incorporation of the NV or the BV by notarial deed, executed by one or more incorporators before a civil law notary in Curaçao. There are no restrictions on the nationality of managing directors, although at least one managing director must be a resident of Curaçao (generally either an individual or a corporation). The sole proprietorship (*Eenmanszaak*) is not incorporated by notarial deed and is not considered to be a legal entity.

The initial registration fee and the annual contribution to the Commercial Register, range between US$ 34 and US$ 550, depending on the amount of invested capital. Notary fees depend on the work required, and the time spent in organising the incorporation, as well as the actual authorised capital. The minimum notary fee is US$ 714.

The second step concerns the registration of the company with the Commercial Registry of the Chamber of Commerce and Industry. This has to be accomplished within a week after incorporation, and an announcement of the incorporation of the company must be published in the Official Gazette

[1132] The mandatory regulations with regard to legal entities under private law are contained in Book 2 of the Civil Code.
[1133] The sole proprietor is not regulated in Book 2 of the Civil Code.
[1134] Civil Code, Book 2, Article 5.
[1135] As of 31 December 2012 a total of 16,480 NVs and 4,641 BVs were registered. Other forms of companies are: Branches of foreign companies, Partnerships (general or limited), Joint Ventures (long and short-term), Trust companies, Proprietorship.

of Curaçao.[1136] The third step concerns the obtaining of a licence for the managing directors to act as such and a licence to carry out business. Pursuant to the Business Establishment Rules (*Vestigingsregeling voor bedrijven*)[1137] an establishment licence application can be denied in the interest of public policy and also, if in the opinion of the government of Curaçao, the public interest so dictates.[1138] Foreign legal entities also have the possibility request a business licence from the government for the purpose of establishing a branch of the foreign legal entity to conduct a business in Curaçao.

For certain types of companies it is necessary to receive an additional licence to operate from one of the authorities or supervisors. This applies to companies such as bars and restaurants, pharmaceutical companies, and financial institutions. In addition, special licences can also be required for personnel, such as residence and working permits. Regarding the dismissal of personnel, in certain cases the employer needs the approval of the director of the Ministry of Labour Affairs and has to file a request.

Intellectual property rights are protected by law in Curaçao.[1139] A trademark owner can only claim exclusive rights to a trademark if the concerned trademark is duly registered for Curaçao with the Bureau for Intellectual Property (*Bureau voor Intellectuele Eigendom – BIP*).[1140] The current legislation does not provide for an opposition procedure with the BIP. Protection of a trademark lasts for 10 years following the date of application. In case of infringement, the owner of a trademark which is registered with the BIP can go to Court, and claim, for instance, injunctive relief, payment of profits or seizure of the infringing goods.

As noted in Chapter VII.4 Public Sector, since the change in constitutional relations there is no legislation to regulate public procurement.[1141] However, the ministers agreed to act in accordance with the legislative framework and the underlying administrative regulations in place prior to October 2010, which implies open bidding as the general method of public procurement, and closed bidding below certain estimated contract sums. There is no legislation to regulate private-to-private procurement.

Most agreements are formalised in officially-signed contracts. Civil law provisions provide adequate enforcement rights regarding contracts.[1142] However, some agreements are oral agreements. Good faith plays an important role in civil law disputes. According to interviewees, the generally accepted standards within economic life are the most important norm for a judge: what is reasonable for a citizen to expect (trust principle).

[1136] Business Establishment Rules (*Vestigingsregeling voor bedrijven*), Official Curaçao Gazette 1946, No.43 and Country Decree, Official Curaçao Gazette, 1978, No.347.
[1137] Chamber of Commerce and Industry, Doing business in Curaçao guide, information provided June 2013.
[1138] See www.doingbusinessdutchcaribbean.com [accessed 2 June 2013].
[1139] Country ordinance authors (*Auteursverordening)* Official Curaçao Gazette 1913 No.3, country ordinance brandnames (*Merkenlandsverordening)* Official Curaçao Gazette 1996, no.188.
[1140] Office for intellectual property (*Bureau voor Intellectuele Eigendom)* www.bip.an [accessed 2 June 2013].
[1141] Country ordinance Government accounts 2010 (*Landsverordening Comptabiliteitsvoorschriften)*, Official Curaçao Gazette 2010, No. Article 27.
[1142] Civil Code Book 6, Contract-law (*Verbintenissenrecht)*.

Resources (practice)

Score: 25

TO WHAT EXTENT ARE INDIVIDUAL BUSINESSES ABLE IN PRACTICE TO FORM AND OPERATE EFFECTIVELY?

Already for many years the private sector has sought attention from the government to streamline administrative procedures to eliminate unnecessary bureaucracy. Procedures to obtain all required business licences and to employ staff can be lengthy and time-consuming.

Although respondents interviewed in the course of this assessment were positive about the legal framework, they noted some significant problems with starting and operating a business in practice. Although for locals it is reasonably easy to start a business, this is not the case for foreigners. According to a business expert, foreigners have to comply with establishment requirements with respect to location, type of business, credit-worthiness and financing, and depending on the sector, with minimum investment requirements.

Moreover, although the incorporation and registration of a company can be accomplished within less than 10 days, the application process of the issuance of an establishment licence (*vestigingsvergunning*) is very lengthy in practice. It can last months. On the positive side, in anticipation of the issuance of a licence it is generally permitted that the company commences its operations.[1143] Another positive point which is mentioned by the respondents concerns the costs of starting a business. Those interviewed didn't consider those costs to be a hurdle.

In addition, for many years, employers have experienced significant problems in acquiring resident permits and working permits for their personnel. Employers consider the procedures to be bureaucratic, time-consuming and lengthy. Moreover, employers are generally of the opinion that the procedures for the dismissal of personnel are cumbersome and lengthy. Correspondence from several years ago (2008) of the Business Association Curaçao (VBC) shows that the private sector has, for a number of years, been trying to get attention from the government to change the situation of 'red tape' into a situation of 'red carpet'.[1144] The OECD survey of 2005 on public perceptions of investors in the Netherlands Antilles[1145] reveals that there are a number of administrative barriers, in particular start-up requirements, obtaining permits for non-nationals, and migration regulations. Eight years later, a study on strategies for sustainable long-term economic development in Curaçao shows that administrative barriers are still prevalent, in particular, the requirements regarding the start-up of a business, the obtaining of permits for non-nationals, and migration regulations.[1146]

On the positive side, respondents state that property, contract and tender rights are protected effectively in practice. However, at the same time they indicated that there are no complaint procedures set across the board, but there are some complaint procedures for government-related issues (*Landsverordening Administratieve Rechtsspraak – LAR*).[1147] Unfortunately, according to the respondents, these administrative law procedures are lengthy and ineffective. (Also see Independence practice.)

[1143] See www.doingbusinessdutchcaribbean.com [accessed 2 June 2013].
[1144] Letter Business Association Curaçao (VBC) Brainstorm sessie Bureaucratie Dienst Economische Zaken / KVK d.d. 7 November 2008.
[1145] Organisation for Economic Co-operation and Development (OECD), Investment Policy Reviews, Caribbean Rim, Netherlands Antilles, 2005.
[1146] TAC Applied Economic and Financial Research, 2013:42.
[1147] Country ordinance Administrative law (*Landsverordening Administratieve Rechtspraak*), Country Gazette 2006, No.71.

Independence (law)

Score: 75

TO WHAT EXTENT ARE THERE LEGAL SAFEGUARDS TO PREVENT UNWARRANTED EXTERNAL INTERFERENCE IN ACTIVITIES OF PRIVATE BUSINESSES?

There are comprehensive legal safeguards to prevent unwarranted external interference in the activities of private businesses.

In general, the granting of licences or permits is based upon criteria. Some of these criteria are well defined, others leave room for interpretation. Civil servants determine whether the criteria are met; thus decisions are ultimately subject to interpretation by officials. Civil servants may be – but are not necessarily – prohibited from being a board member or a shareholder of companies, foundations and associations which regularly come or may come into contact with the public administration unit in question.[1148]

In all cases involving a decision of a governmental organisation, it is possible to start an appeal procedure (*Landsverordening Administratieve rechtspraak – LAR-procedure*).[1149]

The regulations on tax audits are reasonable. A taxpayer will usually be notified about an upcoming audit three weeks in advance and the inspection should take place during office hours. An urgent audit can be carried out without an advance notification, but only for specific reasons regarding general principles of good governance.[1150] An investigation in a home is only allowed with the permission of the resident or the permission of the public prosecutor. Taxpayers can file a complaint regarding actions and decisions of the tax authorities with the tax authorities themselves or through the tax court.[1151]

There is, however, no competition authority in place to enforce fair competition and to investigate cartels, approve or reject mergers and acquisitions, and promote competition through the publication of guidance notes and other advocacy activity.[1152] However, legislation to establish such authority is at an advanced stage.[1153]

[1148] Country ordinance Legal and material rights and obligations of civil servants (*Landsverordening materieel ambtenarenrecht*), Official Curaçao Gazette 2010,Ibid., Article 54-55
[1149] Ibid.
[1150] Supreme Court 8 January 1986, BNB 1986/128
[1151] General ordinance national taxes (*Algemene landsverordening landsbelastingen*), Country Gazette, 2010, no.86 and Articles 29 and 31.
[1152] Competition authority to be established (*Mededingingsautoriteit in oprichting*), 26 March 2013, via www.versgeperst.com [accessed 5 May 2013].
[1153] Staten van Curaçao zitting 2011-2012, Landsverordening inzake concurrentie.

Independence (practice)

Score: 50

TO WHAT EXTENT IS THE BUSINESS SECTOR FREE FROM UNWARRANTED EXTERNAL INTERFERENCE IN ITS WORK IN PRACTICE?

The state and/or other external actors do not regularly interfere with the operations of the business sector, but bureaucratic and lengthy procedures can hamper business operations. The procedures to protect business owners are also lengthy, cumbersome and can be costly.

According to experts interviewed it is uncommon for government officials to solicit unofficial payments (for example bribes) in their dealings with the business sector. On the other hand, the number of audits and investigations by the Court of Audit Curaçao (*Algemene Rekenkamer Curaçao*), the internal auditor of the government (*Stichting Overheids Accountants Bureau – SOAB*) and the special police force (*Landsrecherche Curaçao*) give an impression of the extent of the corruption problem between the public and the private sector. Both ARC[1154] and SOAB looked into the legality and the efficiency of the provisions of resident permits and working permits and indicated irregularities in the issuing of licences. However, the special police registered just one bribery case in 2012.[1155]

How widespread corruption is between the public and the private sector is not known. Experts presume there have been a number of cases of petty bribery. Interviewees consider that lengthy procedures and the lack of transparency on the part of the administrative authorities do create opportunities for corruption. For instance, a business expert stressed the importance of smooth handling and clearance of goods at Customs. In the past, a lengthy and cumbersome procedure could sometimes be shortened by paying bribes.

Complaints about the length of tax audits of the Curaçao tax audit institution (*Bureau Belasting Acountants dienst – BAB*) are not uncommon. According to interviewees, tax audits sometimes take a year which can seriously disturb business operations. Moreover, it can take a long time before business owners are notified about the results of the audit.

Protection against unwarranted decisions of a governmental organisation is to some extent afforded through LAR-procedures,[1156] but in practice this is time-consuming and not results- and client-oriented. One expert stated, 'while in theory a LAR-procedure is easy to do, in practice it is a lengthy and costly process which often defeats the purpose of the matter'. A civil procedure can sometimes take a year and, if it includes an appeal procedure, sometimes a few years. On the positive side, a respondent stated, 'some help has come through the office of the Ombudsman'. In case of unwarranted behaviour of the public administration or a civil servant, it is also possible for the business sector to file a complaint at the Ombudsman's office. Regarding actions and decisions of the tax authorities, a Court of Appeal for tax cases does not exist Curaçao. According to an interviewee, the possibility of a higher court is currently being explored.

Another barrier to enforcing decisions of governmental organisations with civil procedures is the process costs for parties to start a procedure.

[1154] See www.ar-Curaçao.org, 'Curaçao – Reports'.
[1155] Annual report *Landsrecherche*, 2012, p.9.
[1156] In 2011 the administrative court had under its consideration 1,131 administrative cases, nine per cent fewer than in 2010.[1156]

Transparency (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS TO ENSURE TRANSPARENCY IN THE ACTIVITIES OF THE BUSINESS SECTOR?

There are no disclosure rules for businesses to make their accounts and other information publicly available. Financial institutions have to publish a summary of their financial statements.

As a general provision in Curaçao's corporate law, all legal entities – including foundations and private foundations that are not running an enterprise – must maintain a proper administration and prepare financial statements, containing at least an annual balance sheet, a profit and loss account and explanatory notes.[1157] In case a foundation carries out commercial activities, it is subject to profit tax. All financial institutions supervised by the Central Bank of Curaçao and Sint Maarten (see also Chapter VII.14 Supervision Institutions Private Sector) are obliged to compile financial statements in accordance with International Financial Reporting Standards (IFRS). IFRS is a reporting standard that requires that values are measured at fair value, that is, the market value or the best estimate of the market value.

Businesses are not required by law to make any of their reports and recommendations known to the general public. Only large limited liability companies (NVs) have a legal obligation to make the financial statements available to their stakeholders.[1158] A company is considered 'large' if it complies with the following three criteria: more than 20 employees in Curaçao, an asset value of the company of more than NAf 5 million (US$ 2.8 million) and a net asset which exceeds NAf 10 million (US$ 5.6 million).[1159] In addition, the Central Bank of Curaçao and Sint Maarten requires that banks and insurance companies publish a summary of their financial statements in the newspaper and/or their website, the so-called 'Consolidated Financial Highlights'.[1160]

According to a banking expert, full banking examinations take place approximately every five years, although in the years between, other supervision examination activities take place. Those examinations focus, for example, on certain departments or laws, such as IT security or compliance with anti-money-laundering regulations.

Transparency (practice)

Score: 25

TO WHAT EXTENT IS THERE TRANSPARENCY IN THE BUSINESS SECTOR IN PRACTICE?

In general, businesses do not make their financial accounts and other information publicly available. Large companies under supervision have to publish consolidated financial highlights.

[1157] Civil Code, Book 2, Article 15.
[1158] Book 2 of the Civil Code, Article 121.1
[1159] Ibid, Article 119.
[1160] Central Bank Curaçao and Sint Maarten, Provisions for the Disclosure of Consolidated Financial Highlights of
Domestic Banking Institutions, January 2010.

The Chamber of Commerce and Industry has a website offering some general information on doing business, and an online database.[1161] Several web pages regarding the general information on the site have been under construction for more than a year. Other information, for example about business associations in Curaçao, is outdated. Information about registered companies is either readily-available online or is made available upon request. Information regarding the ownership structure of entities is not available to the general public.

Due to a lack of empirical research it is difficult to assess how many entities have their own websites. ‘Large’ businesses (for example hotels, banks, and trust companies) tend to have websites that offer some useful data, including management information and – in the case of financial institutions – consolidated financial highlights. At the same time, as far as we could determine, information regarding management and ownership structure is missing on the websites.

Interviewees consider that financial auditing and reporting standards are effectively applied in practice, as long as an accountant is involved. If not, it is uncertain. As the law requires, only large entities make their financial statements available for the stakeholders. According to interviewees, information is only presented in the form of summaries of the financial statements and is not very informative. Large companies report occasionally on corporate responsibility and sustainability.

Regarding the frequency of supervision activities in practice, the Central Bank of Curaçao and Sint Maarten states in its annual report of 2011: ‘The Bank visited 30 entities within the sector: 18 onsite investigations and 12 management meetings. Of those 30 visits, 21 were at trust service providers. In addition, the department held over 60 meetings with entities at the Bank itself, more than 20 of them with trust service providers.’[1162]

Accountability (law)

Score: 50

TO WHAT EXTENT ARE THERE RULES AND LAWS GOVERNING OVERSIGHT OF THE BUSINESS SECTOR AND GOVERNING CORPORATE GOVERNANCE OF INDIVIDUAL COMPANIES?

There are some general rules to govern oversight of the business sector. Specific rules can be addressed through internal charters and regulations. There are specific rules for companies under supervision.

Although Curaçao’s legislative framework covers many relevant aspects of corporate governance, both related to licensing procedures as well as on-going business, there is no corporate governance code for the private sector equivalent to that introduced for the public sector in 2010 (governance advisor SBTNO).[1163] (See also Chapter VII.4 Public Sector). The law establishes some general rules, while allowing companies to have specific guidelines addressed through their internal charters and regulations. If provided for in the articles of association, a limited liability company (NV) may have a board of supervisory directors (*Raad van Commissarissen*) to oversee the management of the company and to advise and supervise the board of managing directors. Unless the articles of association determine otherwise, managing directors and supervisory directors are appointed by, and can be suspended or dismissed by, the general meeting of shareholders. The possibility of an independent supervisory board does not exist for a private limited liability company (BV).

[1161] Search company www.Curaçao-chamber.an [accessed 2 June 2013].

[1162] Annual report CBCS, 2011, p. 54.
[1163] Island ordinance Corporate governance (*Eilandsverordening Corporate governance*), Official Curaçao Gazette 2009, No.92, Article 4.

The board of directors has the obligation to issue financial statements within eight months after end of the fiscal year.[1164] As mentioned before, the financial statements should consist of at least a balance sheet, a profit and loss statement and explanatory notes. All directors (supervisory and management) have to sign the financial statements and these have to be approved in a shareholders meeting. Each shareholder has the right to request a closer look at the documents within two years after completion and approval of the financial statements.

The financial statements have to comply with generally acceptable standards and have to give such insight that a sound opinion can be formed on the capital and the results, as well as on the solvency and the liquidity of the company. The Civil Code does not prescribe specific accounting principles. Companies are required to retain the financial statements and the supporting documentation for at least 10 years for review by stakeholders such as the shareholders and the tax authorities.

The law establishes specific governance rules for companies under supervision. As noted in Chapter VII.14, Curaçao has a number of supervisors who monitor companies' compliance with corporate governance laws. The Central Bank of Curaçao and Sint Maarten (CBCS) supervises the financial market sector. The Gaming Control Board supervises the casino sector and, as noted in Chapter VII.11, the Bureau Telecommunication and Post supervises the broadcast media. In general, these and other supervisory authorities have powers of enforcement (that is penalties, administrative fines and withdrawal of licences) for non-compliance. The legislative framework of the supervisors covers many relevant governance aspects, both related to the licensing procedures as well on-going business. This is especially true for the CBCS, which strengthened some years ago its legal framework for supervision on compliance with integrity regulations.[1165] Financial integrity supervision focuses on the way in which an institution and affiliated (legal) persons adhere to standards set by the CBCS. Moreover, the supervision focuses also on the (corrective) measures for risk containment taken by the institution to promote and maintain its integrity.[1166]

Besides national regulators and supervisors, several international organisations monitor the activities of the private sector in Curaçao, as part of the Kingdom. As noted in Chapter VII.14 Supervisory Institutions Private Sector, Curaçao is a member of, among other bodies, the Financial Action Task Force (FATF), the Caribbean Financial Action Task Force (CFATF), the Egmont Group of Financial Intelligent Units, the International Association of Insurance Supervisors, and the Group of International Finance Centre Supervisors.

As mentioned before, Curaçao does not have a competition authority in place to enforce fair competition.

Accountability (practice)

Score: 50

TO WHAT EXTENT IS THERE EFFECTIVE CORPORATE GOVERNANCE IN COMPANIES IN PRACTICE?

Whether or not internal and external measures are effective in ensuring good governance is difficult to determine due to a lack of public information. The effectiveness of corporate governance varies in the sector.

As the boards of supervisory directors (*Raad van Commissarissen*) of companies do not provide information which is available for the public, the amount of specific information related to the

[1164] Civil Code, Book 2, Article 15.
[1165] See CBCS Policy rule for sound business operations in the event of incidents and integrity – sensitive positions, January 2011 and CBCS Policy rule on integrity testing, Regulation on the number of (co)policy positions permitted per person (*Beleidslijn voor Betrouwbaarheidstoetsing van locale PEP's*), on www.centralBank.cw [accessed 23 February 2013].
[1166] See 'integrity financial sector' via www.centralbank.an [accessed 23 February 2013].

process, outcome and effects of supervision is limited. The different external supervisors and regulators do sometimes provide some information, for example the Bank in its annual reports, but others such as the Gaming Control Board do not. (Also refer to Chapter VII.14 Supervisory Institutions Private Sector). None of the available information on corporate governance can be labelled 'comprehensive'. And although those supervised generally speak of effective oversight, respondents speak also of 'great diversity' in the quality, quantity and effect of supervision.

However, progress has been made in recent years in the application of corporate governance rules by Curaçao enterprises, most notably by those who are supervised by the Central Bank of Curaçao and Sint Maarten.

The CFATF rates the relevant supervisory powers as largely compliant with the CFATF recommendations, but also made several suggestions to improve supervision.[1167] However, even though the supervision of some sectors can be improved, there are also sectors without supervision on financial integrity. As one expert stated: 'Who is looking at what is happening in the bakery?'

Integrity (law)

Score: 50

TO WHAT EXTENT ARE THERE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF ALL THOSE ACTING IN THE BUSINESS SECTOR?

The business sector shows a mixed picture with regards to integrity safeguards. The financial sector and certain professional organisations have the strongest mechanisms in place, including integrity and complaint procedures. Several other sectors do not have a mechanism at all.

Although no sector-wide code of conduct or anti-corruption code exist in Curaçao at present, several companies, especially companies with international ties, do have internal codes. Often, however, such codes are vague, describing values and principles for how employees have to act. In general, the codes focus on the obligation of employees to discuss dilemmas that characterise the integrity risks of that company or the profession. Very rarely does a code refer to corruption directly.

Businesses which are supervised by the Central Bank are obliged to have an integrity policy.[1168] The supervision of personal integrity is based on integrity rules for directors and staff, including rules to prevent conflicts of interest, with special attention to politically-exposed persons.[1169] Thus, for those supervised, a basic screening procedure including a testimonial of good conduct is standard practice. Moreover, supervised institutions are obliged to apply organisational measures to promote sound business operations.

Several professional organisations in Curaçao have developed their own professional code. This holds, for example, for accountants and lawyers. Chartered accountants associated with the Dutch professional organisation NBA (*Nederlandse Beroepsorganisatie van Accountants*)[1170] are bound to the organisation's Code of Conduct, which incorporates international standards set by the International Federation of Accountants (IFAC) and espouses values such as independence and

[1167] CFATF, June 2012: 11, 181, and 203. Also see 156-157 and 160. Also see CFATF, October 2012: 33-35 and 10.
[1168] See CBCS Policy rule for sound business operations in the event of incidents and integrity – sensitive positions, January 2011.
[1169] See CBCS Policy rule on integrity testing, Regulation on the number of (co)policy positions permitted per person (*Beleidslijn voor Betrouwbaarheidstoetsing van locale PEP's*), on www.centralBank.cw [accessed 23 February 2013].
[1170] Code of conduct auditors. (*Verordening Gedragscode accountants (RA) en Verordening gedragscode accountants*) via www.nba.nl [accessed 4 June 2013].

objectivity.[1171] Also, lawyers associated to the Curaçao Bar Association[1172] are bound to a code of conduct, which espouses values such as independence, objectivity and confidentiality.

In the case of chartered accountants employed in the business sector of Curaçao, complaints may be filed with the *Accountantskamer*, the Dutch disciplinary institution which deals with complaints against registered individuals (not organisations). For accountants with similar qualifications, such as certified public accountants, similar disciplinary action is possible.[1173] In the case of lawyers, complaints may be filed with the Council of Supervision (*Raad van Toezicht voor de advocatuur*).[1174] Tax consultants in Curaçao do not have a disciplinary institution and therefore complaints have to be brought before the Court of First Instance.

Having a code of conduct and an effective integrity policy is not a selection criterion in tender procedures in Curaçao. Financial institutions generally have professional compliance officers, whose main role is to check if the institution follows the laws. There are also non-financial institutions with a compliance officer and/or an appointed confidant (*vertrouwenspersoon*) to report integrity issues to. The Association of Compliance Officers of Curaçao (ACCUR) has 130 members.

The legal framework contains adequate provisions regarding corrupt practices within and between companies. Private sector bribery (both active and passive) is a punishable offence under the Penal Code[1175] and can result in a prison sentence of up to three years and a fine of ANG 25,000 (US$ 13,000).

The person or entity in charge of the incorporation of a company is mainly responsible for these legal corporate obligations. A director is mainly liable for the damage occurred due to his failure to comply with obligations towards the company. In general, the director will not be held liable if he/she can prove that he/she did everything in his/her power to comply with his/her obligations on behalf of the company. He/she also has to prove that he has taken appropriate actions in order to avoid liable situations, and can be held liable up to a year after failure to comply with his/her obligations.[1176]

Integrity (practice)

Score: 25

TO WHAT EXTENT IS THE INTEGRITY OF THOSE WORKING IN THE BUSINESS SECTOR ENSURED IN PRACTICE?

The consistency and effectiveness of integrity efforts cannot be determined, but in general there is a reactive approach regarding integrity issues.

In general, businesses have no comprehensive approach to ensuring the integrity of board members and staff. According to those interviewed, the majority of companies do not have a formal pre-employment screening procedure. Even where they exist, codes of conducts are not always applied. Regarding those companies with an integrity policy, it is not publicly known if they apply that policy in an effective way. This also accounts for integrity trainings; for example, accountants and lawyers

[1171] See 'professional rules auditors' (*Beroepsregels voor accountants)* www.nba.nl [accessed 7 February 2013].
[1172] Curacao Bar Association (*Orde van Advocaten*), http://ordevanadvocaten.an [accessed 4 June 2013].
[1173] www.accountantskamer.nl [accessed 12 February 2013]. Also refer to Press notice Dutch Caribbean Accountants Association of 28 May 2012 (*Persbericht Nederlands Antilliaanse Vereniging van Accountants*), see also: *Persbericht van de Nedelands Antilliaanse Vereniging voor accountants* http://accountantCuraçao.files.wordpress.com [accessed 12 February 2013].
[1174] *Advocatenlandsverordening (1959). De Raad van Toezicht fungeert als tuchtrechter voor advocaten. Als leidraad voor het toetsen van het handelen van advocaten gelden de Gedragsregels voor Advocaten,* via www.smartbox.an [accessed 3 June2013]
[1175] Penal code, Book 2, Article 312-313.
[1176] Doing business in Curaçao

are trained in integrity issues because their professional organisation requires them to be, but information to independently assess the consistency and effectiveness of these efforts is not available. According to several business experts, the general concern for integrity within and from outside the private sector is low.

Interviewees consider the common approach to integrity in the business sector to be reactive. If certain integrity breaches are detected relating to financial institutions which are supervised by the Central Bank of Curaçao and Sint Maarten they are obliged to inform the supervisory authority, depending on the nature, the extent and the loss incurred.[1177] The provisions stipulate how to act in cases of integrity breaches.

All business respondents consider that the Curaçaoan private sector, when encountering financial irregularities or corruption, traditionally deals with the integrity breach quietly, taking internal measures – which may include dismissal – but otherwise trying to avoid making anything public. According to those interviewed, in practice, reputational risks, both for the business involved as well as the perpetrator, mean that alleged integrity violations are often not reported to law enforcement agencies.

No blacklist of companies involved in corruption and money laundering has been compiled, although the CBCS website does carry an international list of companies sponsoring terrorism (OFAC-list).[1178]

The Dutch *Accountantskamer* does note an increase in complaints filed against accountants from the former Netherlands Antilles.[1179]

Role

Anti-corruption policy engagement

Score: 50

TO WHAT EXTENT IS THE BUSINESS SECTOR ACTIVE IN ENGAGING THE DOMESTIC GOVERNMENT ON ANTI-CORRUPTION?

Sometimes there are public statements by senior business people calling on government to do more to fight corruption.

The different business groups, unions and professional organisations, as mentioned in the first paragraph of this chapter, all have their own lobbying arms. A few business associations discuss possible problems and irregularities such as corruption with the public sector, and communicate the relevant information through a range of information channels.[1180] For example, during the period of the first cabinet of Curaçao, the Cabinet-Schotte, the Business Association Curaçao (VBC) made several statements in terms of holding the government accountable.

The Curaçao business sector tries to participate actively in various ways in government policies and initiatives. For instance, the business sector participates in *Kolaborativo*, as noted in Chapter VII.12. In the past *Kolaborativo* collaborated regularly with the government, regarding several social and

[1177] CBCS Policy rule for sound business operations in the event of incidents and integrity – sensitive positions, January 2011. CBCS (*Beleidsregel integer bedrijfsvoering bij incidenten en integriteitsgevoelige functies)*, January 2011, article 3.2.
[1178] Foreign Assets Control (OFAC) via www.treasury.gov
[1179] Accountantskamer, Annual Report 2011 – Outlook 2012 (*Jaarverslag 2011 – Vooruitblik 2012*), p.17.
[1180] Several newsletters Business Association Curaçao, (*VBC*) and press releases.

economic topics of the country. With the changes in the political landscape in 2010 *Kolaborativo* experiences a lack of cooperation of the government.

Support for engagement with civil society

Score: 75

TO WHAT EXTENT DOES THE BUSINESS SECTOR ENGAGE WITH/PROVIDE SUPPORT TO CIVIL SOCIETY ON ITS TASK OF COMBATING CORRUPTION?

The business sector increasingly does engage with or provide support to civil society to raise awareness on good governance and educate the business sector on corporate governance.

The experts interviewed recalled several examples of sponsoring civil society's anti-corruption activities. Different private initiatives have contributed to the understanding of the corruption problem. In 2005 a local bank financed the Academic Chair of Good Governance for almost five years. This Chair was established at the University of the Netherlands Antilles to study and promote good governance practices.[1181] In mid-2008, in collaboration with the Chamber of Commerce and Industry of Curaçao, the education of corporate supervisory directors was started by the Academic Chair. Unfortunately, since the term of the first-appointed professor ended in 2010, the position has been vacant.

Furthermore, since 2005 a private partnership[1182] has organised a 'Day of Directorate' (*Dag van Commissariaat*) on several occasions. In this yearly event, special attention is paid to corporate governance for executives of (state-owned) companies.[1183] Today several other private organisations offer 'governance education' programmes.

[1181] www.governanceCuraçao.com [accessed 6 May 2013].
[1182] VanEps Kunneman VanDoorne, the Galan Group and the University of the Netherlands Antilles for their initiative to organise this conference with the central theme 'The Governance of Government-owned Enterprises'.
[1183] See also: Magazine Coaching, 31 May 2013 www.coaching-magazine.net [accessed 31 May 2013].

VII.14 SUPERVISORY INSTITUTIONS (PRIVATE SECTOR)

STRUCTURE AND ORGANISATION

Curaçao has a number of institutions responsible for, among other things, the supervision of the financial integrity of the private sector. This chapter focuses on three of its main players: the Central Bank of Curaçao and Sint Maarten (CBCS)[1184], the Gaming Control Board (GCB), and the Financial Intelligent Unit (MOT – *Meldpunt ongebruikelijke transacties,* the Unusual transactions reporting office).[1185] The first is a legal entity constituted and governed by public law. The second is a 'public foundation', that is, a private foundation under public influence,[1186] established by the former Island territory of Curaçao. The third is an administrative unit of the Ministry of Finance.

As of 10 October 2010, and as part of the agreements between the Kingdom partners to reorganise constitutional relations, there is one Central Bank for both Curaçao and Sint Maarten, based on one set of rules and governed on the basis of parity[1187] between the two countries, the CBCS. The legal basis for the acts of the Central Bank is the Central Bank Charter for Curaçao and Sint Maarten (referred to below as the Bank Charter), which is a mutual arrangement based on Article 38.1 of the Charter for the Kingdom of the Netherlands.[1188] CBCS's board of directors (referred to below as the board of executive directors)[1189] is to have three members, including a president. The board is to strive for consensus, but if this cannot be achieved, the president decides.[1190] The acts of the executive board of directors are to be supervised by a supervisory board of seven. The two countries are the equity holders of the Bank.[1191] One of the Bank's tasks is to promote the soundness of the countries' financial system and as such the Bank is responsible for the prudential supervision – including integrity supervision – of Curaçao's financial sector.[1192] In addition, CBCS is

[1184] This chapter does not assess the Bank's activities related to its monetary tasks.
[1185] This chapter does not assess MOT's activities related to its tasks as Reporting Office and the analysing and classification of unusual reports, and focuses on its supervisory tasks. CFATF does provide an extensive analysis, see, for example, CFATF, Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism, Curaçao, (s.l.: CFATF, June 2012).
[1186] A public foundation is formally defined as a foundation of which the government, the Council of Ministers or a minister decides on appointment or dismissal of one or more board members or on amendments of the foundation's charter. See Island ordinance corporate governance (*Eilandsverordening corporate governance*), Country Gazette 2009, No.92, Article 1.
[1187] Cf. Preamble of the Bank's Charter. This does not imply capital and profit is distributed on the basis of parity. See Article 33 of the Bank's Charter on the ratio to be used.
[1188] Charter for the Kingdom of the Netherlands (*Statuut voor het Koninkrijk der Nederlanden*), Bulletin of Acts and Decrees 2010, No.775; Island ordinance to adopt the draft of the country ordinance entailing approval of the Central Bank Charter for Curaçao and Sint Maarten (*Eilandsverordening ter vaststelling van het ontwerp van de landsverordening houdende goedkeuring van het Centrale Bank-Statuut voor Curaçao en Sint Maarten*), Official Curaçao Gazette 2010, No.85. (Below: Bank Charter.) Also refer to Official Curaçao Gazette 2010, No.87, Appendix w (*Kader-Vaststellingslandsverordening centrale bank, geldstelsel, deviezenverkeer en wisselkoers*). The predecessor of CBCS, the Bank Netherlands Antilles (BNA), dates back to 1828.
[1189] CBCS's website lists five persons as members of the board of executive directors (www.centralbank.cw, as accessed on 2 June 2013). Below 'board of executive directors' is only used to refer to the three statutory directors of the Bank.
[1190] Bank Charter, Article 19.
[1191] Bank Charter, Articles 19, 21 and 38.
[1192] Ibid., Article 3.

responsible for the supervision of the financial sector's compliance with regulations on the identification of clients and the reporting of unusual transactions.[1193]

Established in 1999, the Gaming Control Board (GCB) is responsible for tasks with regard to gaming control as assigned on the basis of public law. These include the licensing of casinos, the collection of taxes levied on the gaming sector and its supervision, including supervision of compliance with the abovementioned regulations on identification of clients and the reporting of unusual transactions.[1194] The legal basis for GCB's acts is the foundation's charter combined with a decree appointing GCB as the sector's supervisor.[1195] GCB's internal governance structure is not yet in line with the two-tier system incorporated in the corporate governance code. It has one board, responsible for the governing of the foundation. GCB's two directors are responsible for the enactment of the board's decisions and the day-to-day business on the instructions of the board. GCB does not have a supervisory board.[1196]

MOT, Curaçao's Financial Intelligence Unit, was established under the former Netherlands Antilles in 1997. It is Curaçao's administrative unit responsible for collecting, registering, processing and analysing unusual transaction reports regarding money laundering and terrorist financing. MOT's legal basis is the country ordinance Reporting unusual transactions.[1197] As of May 2010, and most relevant for this assessment which focuses on supervisory activities, MOT also acts as the supervisory body to monitor compliance of legal advisors, jewellers, real estate agents and car dealers with the regulations on identification of clients and the reporting of unusual transactions.[1198]

Curaçao or its supervisors are members of several international organisations. As part of the Kingdom, Curaçao is a member of the Financial Action Task Force (FATF). Curaçao or its supervisors are also members of, among other bodies, the Caribbean Financial Action Task Force (CFATF), the Egmont Group of Financial Intelligent Units and the International Association of Insurance Supervisors, as well as the Group of International Finance Centre Supervisors. The latter has close working relations with the Basel Committee on Banking Supervision. Curaçao is committed to the implementation of the FATF-recommendations.

Some institutions are *not* assessed in this chapter. Although GCB was to be the designated supervisor for other gaming activities as well,[1199] at the moment lotteries and other games of chance do not fall under its supervision. Lottery organisers are to be licensed by the government, and the lottery sector also has a foundation to draw the prizes of lotteries, the Foundation Number Games Curaçao (*Fundashon Wega di Number Kòrsou)*, the board of which also includes two members on the recommendation of the sector itself, in practice representatives of two gaming companies. This board does not have supervisory powers, and the lottery sector lacks an independent body with adequate supervisory and sanctioning powers to ensure a level playing field. Registration and

[1193] Country ordinance Identification when rendering services (*Landsverordening Identificatie bij financiële dienstverlening*), consolidated text, Country Gazette 2010, No.40; Country ordinance Reporting unusual transactions (*Landsverordening Melding ongebruikelijke transacties*), consolidated text, Country Gazette 2010, No.41.

[1194] Country ordinance Casino sector Curaçao (*Landsverordening Casinowezen Curaçao*), Official Curaçao Gazette 1999, No.97 as last amended on 29 March 2010, Country Gazette 2010, No.27 (below: Country ordinance Casino sector).

[1195] Charter Gaming Control Board (*Statuten Gaming Control Board*) of 19 April 1999 (below: Charter GCB); Island decree Appointing body Casino sector (*Eilandsbesluit Aanwijzing instantie casinowezen*), Official Curaçao Gazette 2009, No.60.

[1196] Charter GCB, Articles 4, 6, 7 and 9.

[1197] Country ordinance Reporting unusual transactions (*Landsverordening Melding ongebruikelijke transacties*), Country Gazette, 2010, No.41, Chapter II.

[1198] Country decree of 12 April 2010, No. 10/1171(*Landsbesluit van de 12de april 2010, no. 10/1171, regelende de inwerkingtreding van de Landsverordening van de 26ste oktober 2009 (P.B. 2009, no. 65) tot wijziging van de Landsverordening melding ongebruikelijke transacties*), Country Gazette 2010, No.21 and the comparable decree of the same date, No. 10/1172, on identification of clients, Country Gazette 2010, No.22 .

[1199] Cf. Project team GCB, Establishment memorandum Gaming Control Board (*Oprichtingsnota Gaming Control Board*), 28 April 1999, p.6. Transparency International has not been able to determine the formal status of this document.

licensing of online gaming operators lie with the Council for Hazard Games (*Raad voor de Kansspelen*), part of the Bureau Telecommunication and Post. However, although legislation is reported to be in the legislative process, there is no supervision in place to monitor internet casinos' operations.[1200] As was emphasised in our assessment by several experts, this lack of supervision is an important loophole in Curaçao's legislation, and renders the sector vulnerable. This is one of the main conclusions of this pillar's assessment, but is not further addressed below because specific institutions to watch over the sub-sector's integrity do not exist.

ASSESSMENT

Capacity

Resources (practice)

Score: 75

TO WHAT EXTENT DO THE SUPERVISORY INSTITUTIONS (PRIVATE SECTOR) HAVE ADEQUATE RESOURCES TO ACHIEVE THEIR GOALS?

CBCS, GBC and MOT appear to have adequate financial resources to achieve their goals in practice. Staff members are generally thought to be of high quality, but there are some concerns that the number of people allocated to some supervisory tasks may be insufficient.

CBCS manages and controls its own budget and is financially independent, although it is capitalised by the government and transmits surplus funds to the government as dividend payments. The Bank derives the funds necessary partly from its operational results and partly through fees charged to the supervised sector.[1201] Each year, CBCS's board of executive directors is to draft, before 1 December, a budget proposal for the coming year, which only requires approval by the Bank's supervisory board.[1202] If extra funds are necessary, additional budget proposals may be put forward. In practice, the financial resources thus made available to CBCS appear adequate to perform its tasks.[1203]

CBCS's board of executive directors is competent to manage its own personnel and enter into employment contracts based on civil law. It may also, after the supervisory board's prior consent, determine the terms and conditions of employment.[1204] CBCS's board of executive directors exists of the three statutory directors. The board is complemented by two other directors and supported by its staff, which is generally considered to be highly capable and well-trained.[1205] However, CFATF did

[1200] CFATF, June 2012: 187; CFATF, First follow-up report Curaçao, (s.l.: CFATF, October 2012), p.8.
[1201] CFATF, June 2012: 156. Cf., for example, Country ordinance Supervision insurance industry (*Landsverordening Toezicht verzekeringsbedrijf)*, Country Gazette 1990, No.77, Article 77. IMF, Kingdom of the Netherlands-Netherlands Antilles. Assessment of the Supervision and Regulation of the Financial Sector. Volume II: Detailed Assessment of Observance of Standards and Codes. IMF Country Report No. 04/272 (s.l.: IMF, August 2004b), p.80.
[1202] Bank Charter, Article 37.
[1203] Also refer to CFATF, June 2012: 156, 224.
[1204] Bank Charter, Articles 22 and 27. Also refer to Article 47, and the Bank's previous charter, which contained an explicit reference to civil law contracts in Article 20.
[1205] CFATF, June 2012: 222. Also, IMF, Kingdom of the Netherlands-Netherlands Antilles. Assessment of the Supervision and Regulation of the Financial Sector. Volume I: Review of Financial Sector Regulation and Supervision. IMF Country Report No. 04/271 (s.l.: IMF, August 2004a), pp.7, 26, 33.

voice some concerns that, within the framework of anti-money-laundering and combating of the financing of terrorism (AML/CFT), there are ‘potential challenges with resources available for AML/CFT supervision and regulation of the financial institutions’, and that it seems that ‘staff are pressured to effectively undertake AML/CFT oversight’.[1206]

GCB also manages and controls its own budget, but, as far as could be established, is required to file its budget proposal for approval with the minister of finance. The minister of finance accounts for transfers to GCB in Curaçao’s annual budget.[1207] GCB derives its funds from fees charged to the supervised sector minus the funds transmitted to the government.[1208] By country ordinance, it is stipulated that GCB’s costs compensation is 37.5 per cent of GCB´s income generated from the casino sector.[1209] At the moment, this is deemed to be a comfortable position, even though there are doubts as to whether – positive exceptions notwithstanding – the sector actually pays all fees legally due.[1210]

GCB is competent to recruit its own staff, although appointing its directors requires government’s prior consent. This includes the possibility to conclude employment contracts based on civil law and on GCB’s own terms and conditions.[1211] The full workforce comprises approximately 48 people.[1212] In practice, because at its establishment GCB was forced to take over all personnel of the government’s supervisory department, the educational background and work experience of its existing workforce, according to one expert interviewed, is said to be not fully up to par. Because it is not easy to attract new staff with adequate schooling and experience, in-house training is important.

MOT is funded through the regular Curaçao budget, according to its approved budget to be determined by the minister of finance in accordance with the minister of justice.[1213] In practice, up to now the budget is reported to have been sufficient to perform MOT’s core tasks, and substantiated requests to increase the budget have always been honoured in the past.[1214]

The government also sets MOT’s staffing level and appoints its head and the rest of its staff.[1215] MOT’s staff of around 14 people is considered to have an adequate background and expertise, and staff members are trained on a regular basis. However, CFATF did recommend that MOT should be given more resources to, inter alia, fulfil its supervisory role, and also noted that its capacity to analyse and supervise is reported to be reduced because of the high number of turnover and vacancies.[1216] MOT has sent a letter to the minister of finance requesting additional human resources, but has yet to receive a reply.[1217]

[1206] CFATF, June 2012: 252 and 156, also 157, 181 and 224; CFATF, October 2012: 10 and the Appendix, Recommendation 30.
[1207] See, for example, Curaçao Budget 2013 (*Begroting van Curaçao 2013*), Country Gazette 2013, No.10, Statement of income transfers (*Staat van inkomensoverdrachten*).
[1208] Charter GCB, Article 3.
[1209] Country ordinance Casino sector, Article 20c.
[1210] Also refer to ARC, August 2011: 51; ARC, Report of objections and remarks on the annual account 2010 of the General Service of the island territory Curaçao (*Rapport van bedenkingen en opmerkingen bij de jaarrekening 2010 van de algemene dienst van het Eilandgebied Curaçao*)(Curaçao: ARC, October 2012b), p.35.
[1211] Charter GCB, Article 9.
[1212] CFATF, June 2012: 222.
[1213] Country ordinance Reporting unusual transactions, Article 9. Also refer to Country ordinance Government accounts 2010 (*Landsverordening Comptabiliteit 2010*), Official Curaçao Gazette 2010, No.87, Appendix b, Article 39.
[1214] CFATF, June 2012: 82, 86.
[1215] Country ordinance Reporting unusual transactions, Article 8.
[1216] Curaçao Budget 2013, annex Statement of salaried personnel (*Staat van te bezoldigen personeel*). CFATF, June 2012: 202, also 92 and 252; CFATF, October 2012: 10 and the Appendix on Recommendation 30.
[1217] Also refer to CFATF, October 2012: 10 and 37.

Independence (law)

Score: 50

TO WHAT EXTENT IS THERE FORMAL OPERATIONAL INDEPENDENCE OF THE SUPERVISORY INSTITUTIONS (PRIVATE SECTOR)?

CBCS's regulatory framework includes many aspects to ensure its operational independence. There are several regulations to strengthen GCB's and MOT's operational independence, but also some important loopholes which may lead to undue influence or interference.

CBCS derives its formal independent position from its Charter, which can only be amended if both parties, Curaçao and Sint Maarten, agree.[1218] Under its new Charter, CBCS's board of executive directors and supervisory board are not to take any instructions on how to carry out their tasks.[1219] In line with this, the position of 'government commissioner' in the supervisory board no longer exists. CBCS also has the sole authority to issue and withdraw licences and sanction non-compliance. Moreover, to support CBCS's operational independence, CBCS's charter and the relevant supervision regulations contain far-reaching confidentiality clauses. (Also refer to Integrity, below.) And as of 2010, CBCS's board and personnel are not liable for damages brought about in the normal performance of their duties, unless these are due to intent or willful recklessness.[1220]

Several elements in CBCS's recruitment procedures are designed to reinforce this principle of operational independence. Thus, for example, appointment procedures are such that parity between the countries is ensured, and require the supervisory board's recommendation of a (list of) candidate(s).[1221] Appointment to the supervisory board is limited to four years, and appointment to the board of executive directors – barring transitional arrangements provided for – to eight. Both can be extended only once.[1222] Also, all board members are to meet several specified professional requirements, in accordance with requirements included in function profiles which are to be made public.[1223] Those under supervision of the Bank cannot be board members, and neither can those related to board members or the ministers of finance through family ties. Some country ordinances do contain similar provisions for the Bank's personnel,[1224] and the Bank's internal regulations include some additional regulations for on-site examiners to safeguard the examiner's independence, as well as more general ones requiring prior consent on additional functions for personnel.[1225] (Also see below on Integrity.)

[1218] Cf. Article 38.1 of the Charter for the Kingdom of the Netherlands.
[1219] Bank Charter, Article 18.
[1220] Ibid., Article 14. Also refer to Article 15. Cf. IMF, 2004a: 28.
[1221] Bank Charter, Articles 20 and 25.
[1222] Ibid, Articles 20, 25 and 45. According to the Regulation Terms of Employment Board Bank of the Netherlands Antilles (*Reglement Arbeidsvoorwaarden Direktie Bank van de Nederlandse Antillen*) and the previous Bank Charter, before the change in constitutional arrangements, the president was to be appointed for six years, but could be reappointed immediately and serve multiple consecutive periods.
[1223] Ibid.
[1224] Some but not all Country ordinances contain a specific article for the Bank's personnel as well, see for example Article 2 of the Country ordinance Supervision insurance industry. The ordinance on banking supervision does not contain such a provision.
[1225] Decision professional rules for supervisory personnel of the Bank Netherlands Antilles (*Besluit beroepsregels voor toezichtmedewerkers van de Bank Nederlandse Antillen*), 26 September1995 and Regulations Terms of Employment personnel Bank of the Netherlands Antilles (*Reglement arbeidsvoorwarden personeel van de Bank Nederlandse Antillen*), relevant for personnel employed more than 20 hours per week. The Bank is also reported to have implemented the Regulation incompatibilities Bank of the Netherlands Antilles (*Incompatibiliteitenregeling Bank van de Nederlandse Antillen*), Draft 14 April 2003. This regulation has a broader scope and covers, *inter alia*, the Bank's deputy directors and its supervisory personnel.

GCB's operational independence is not anchored as explicitly in the law. GCB derives its independent position from a government mandate, but to revoke it Parliament's consent is not required. Also, there appears to be no disposition in the legislation or in GCB's charter to prevent government exercising its powers directly to decide on the issuing of licences.[1226] However, within the AML/CFT-framework, GCB does have the sole authority to sanction non-compliance, in ways similar to CBCS and MOT. GCB's funding construction does limit the risk of political interference but increases dependency on, and the risk of interference from, the sector. (Also refer to Resources above.)

Nevertheless, there are some provisions that strengthen GCB's independence. For one, because government (or a minister) – which is to appoint and dismiss the board and needs to approve appointment and dismissal of directors[1227] – is to abide with the corporate governance rules introduced some years ago. (Also refer to Chapter VII.4 Public Sector.) In addition, GCB's charter requires a majority of three of the five board members – providing they satisfy the function profiles – to be appointed on a binding proposal of the CBCS, the public prosecutor and the Chamber of Commerce respectively.[1228] Also, board members are to be appointed for four years, or, if appointed secretary, six years, and may serve no more than two periods.[1229] Those who have a direct or indirect interest in the gaming industry may not be appointed to the board.[1230]

An important loophole, however, is the provision that the board remains a legal board as long as at least two of its members are in office, combined with government's explicit authority to dismiss board members.[1231] And contrary to CBCS's charter, GCB's charter does not explicitly rule out family ties between those under supervision, board members and appointing ministers, and there are no specific regulations on legal protection or immunity of GCB board and staff members. More generally, although a draft revision has been submitted, GCB's current charter is not yet adapted to comply with the corporate governance code.[1232]

MOT is responsible to the minister of finance, who appoints, suspends and dismisses its head and staff in accordance with the minister of justice. As of 2010, MOT's head is to be appointed for five years at most, but there are no restrictions on his or her reappointment.[1233] On at least two counts, as CFATF also recently noted, the law leaves room for undue influence. Although MOT's head is to be entrusted with its actual management, the minister of finance is the formal manager of MOT's register, and there is no disposition indicating that he or she cannot decide to exercise his/her powers and directly manage the database.[1234] Also, the composition and mandate of the required 'Guidance Committee'[1235] is a risk. The committee consists mainly of representatives of the private sector, and is also to include representatives of the ministers responsible, other supervisory institutions and the public prosecutor. It is to guide MOT in its mode of operation and advise the ministers on the manner in which MOT performs its tasks. In theory, this could 'interfere with the mode of operation of MOT', and 'could also potentially lead to undue influence from [its]

[1226] See Country ordinance Casino sector, for example Articles 5, 11 and 13; Charter GCB, Article 2.2a. Cf. Project team GCB, April 1999: 9; 12.
[1227] Charter GCB, Articles 4, 8 and 9.
[1228] Ibid., Article 4.
[1229] Ibid.
[1230] Ibid.
[1231] Charter GCB, Articles 8 and 9. Cf. Civil Code, Book 2, Article 55.
[1232] Also refer to STBNO, Advice wrt Charter Gaming Control Board (GCB) as adapted to comply with the Code (*Advies mbt Statuten Gaming Control Board (GCB) zoals aangepast om te voldoen aan de Code*), 14 November 2012. The advisor repeats this in his Advice wrt Advice concerning intention appointment mw. C.H. Hato-Willems as board member Foundation Gaming Control Board (*Advies inzake voornemen benoeming mw. C.H. Hato-Willems als Bestuurslid Stichting Gaming Control Board [art. 9. AB 2009 no.92])*, 15 May 2013.
[1233] Country ordinance Reporting unusual transactions, Article 8.
[1234] Ibid., Article 4; CFATF, June 2012: 81-82 and 91.
[1235] Country ordinance Reporting unusual transactions, Articles 16 to 18.

members'.[1236] Curaçao has indicated that these recommendations will be addressed in an upcoming revision of the relevant ordinance, but so far, the risks identified are still present.[1237]

On the positive side, because MOT employs civil servants, the general rules on rights and obligations of civil servants apply. Thus, for example, employees cannot perform extra duties without the written approval of the minister of finance.[1238] Also, MOT, in its supervisory capacity, has the sole authority to sanction non-compliance.[1239] As of 2010, MOT's head and personnel also enjoy specific legal protection, similar to the legal protection provided to the board and staff of CBCS.[1240]

Independence (practice)

Score: 50

TO WHAT EXTENT ARE THE SUPERVISORY INSTITUTIONS (PRIVATE SECTOR) FREE FROM UNDUE EXTERNAL INFLUENCE IN THE PERFORMANCE OF THEIR WORK IN PRACTICE?

Ever since the change of constitutional relations, both boards of CBCS have been under severe external pressure. There are no indications that this went hand in hand with any undue influence over CBCS's supervisory activities. There are no indications of any undue influence over MOT's supervisory activities. There are indications that GCB's operational independence is at risk due to undue influence of the gaming sector.

Ever since its newly-acquired status as Central Bank of Curaçao and Sint Maarten, it has been questioned whether CBCS is able to operate free from undue external influence. This question gained prominence against the background of increasingly strained relations between its long-time board of executive directors – whose president was appointed more than 22 years ago – several members of the Bank's newly-appointed supervisory board and the governments of the two new countries, as well as strained relations within the supervisory board and between the two new countries. (Also refer to Accountability, below.)

Thus, for example, in May 2011, CBCS's president and the then prime minister of Curaçao publicly accused each other back and forth in such a way that the integrity of the president of the Bank – and that of several ministers – was called into question.[1241] (Also refer to Chapter VII.2 Executive.) Specifically, questions were raised about transactions in connection with the president's pension provisions and on the proper use of authorities related to (a repurchase facility for) bonds issued in both Curaçao and Sint Maarten.[1242] In the period that followed, there were repeated calls for a thorough inquiry into the accusations, both by Parliament and the Executive – which also

[1236] Cf. CFATF, June 2012: 81 and 91.
[1237] CFATF, October 2012: 32.
[1238] Country ordinance regulating the legal and material rights and obligations of civil servants (*Landsverordening Materieel ambtenarenrecht*), Appendix f, Official Curaçao Gazette 2010, No. 87, Article 52. Cf. CFATF, June 2012: 87.
[1239] Country ordinance Reporting unusual transactions, Chapter VIa and similar provisions in the Country ordinance Identification when rendering services.
[1240] Country ordinance Reporting unusual transactions, Article 8.
[1241] See Commissie onderzoek Curaçao, Do it yourselves (*Doe het zelf*) (S.l.: Commissie onderzoek Curaçao: 30 September 2011), September 2011.
[1242] ARC, Report supervision Central Bank of Curaçao and Sint Maarten (*Rapport toezicht Centrale Bank van Curaçao en Sint Maarten*) (Willemstad: October 2012a), p.29; Commissie onderzoek Curaçao, September 2011. Also refer to an official press statement of the Bank, 2012/02, 'Successful emission 'corporate bond' for harbor development St Maarten' (*Succesvolle emissie 'corporate bond' voor havenontwikkeling St Maarten*), 14 February 2012. This press notice also mentions another plan for a bond loan for the Curacao road fund, later denied by the Curaçao government.

approached the supervisory board of CBCS[1243] – as well as by the president himself. In October 2012, and after a request of the Curaçao Parliament, the Court of Audit, ARC, published its report on some of the issues raised.[1244] Some of the allegations appear to have been sufficiently countered, but the report has not been able to answer all of Parliament's questions. This is in part because, according to ARC, it was not given access to all relevant documents, and 'for the time being' decided not to use its authority to call the police for assistance.[1245] Also, CBCS in turn indicates it did not have a chance to give its opinion on the draft.[1246] (Also refer to Integrity, below.)

Meanwhile, because Curaçao and Sint Maarten could not agree on the seventh member of the Bank's supervisory board, it took more than a year to complete it, and only after taking recourse to an 'emergency procedure' which requires the president of the Joint Court of Justice to (temporarily) appoint someone if the governments fail to do so.[1247] At the time of writing, the supervisory board has only once met as a full board. When it did, the members appointed at the proposal of Sint Maarten were reportedly 'bombarded with eggs' by supporters of one of Curaçao's parties in government.[1248] Three of the members, all from Curaçao, do not recognise the appointment of the seventh member as lawful. They refuse to attend the meetings of the supervisory board and do not acknowledge its decisions.[1249] Moreover, according to an expert interviewed, the current composition of the supervisory board is not sufficiently balanced, and contains too few members with relevant expertise in finance and economics, which hampers the effectiveness of its supervision of the acts of the board of executive directors.

Whether and to what extent these strained relations imply CBCS's *operational* independence as *supervisor* of the financial sector is in jeopardy is unknown. CFATF reports that government does not give any operational direction and/or guidance to CBCS.[1250] Neither have there been documented cases of CBCS's staff engaging in activities that could compromise their operational independence. The assessment did return one mention of possible undue influence of the financial sector several years ago, which was also mentioned by the public prosecutor in a recent Dutch court case. In that case, it was suggested in formal declarations to the public prosecutor that the Bank has not always been stringent in its supervision and, in that specific case, was even remarkably lenient when issuing a Bank permit.[1251] The Bank issued a press statement firmly refuting the insinuations,[1252] whereas three of the seven members of the supervisory board did find reason for a thorough financial forensic investigation.[1253] However, as yet such an investigation has not been conducted, and the issue and claims remain unsubstantiated.

Over the last couple of years, GCB's operational independence has been called into question to a point where, according to one observer interviewed, 'at this moment the casino sector determines what happens within its supervisor GCB'.[1254] Developments do raise some legitimate questions. Because one board member reached his pension, two members put forward at the recommendation

[1243] See Launching inquiry w.r.t. developments Central Bank of Curaçao and Sint Maarten, (*Instelling onderzoek m.b.t. ontwikkelingen rond de Centrale Bank van Curaçao en Sint Maarten*), letter of the Prime Minster a.i., Mr. Ch. Cooper, to CBCS' Supervisory Board, 31 May 2011.
[1244] ARC, October 2012a.
[1245] ARC, October 2012a: 4.
[1246] Also refer to ARC, October 2012a, p.38.
[1247] Bank Charter, Article 25.
[1248] See, for example, 'Vote supervisory board CBCS is 4/3' (*Stemverhouding RvC CBCS is 4/3*), 24 April 2012 via www.kkcuracao.com [accessed 24 February 2013].
[1249] See, for example, 'Camelia asks questions to researchers PwC' (*Camelia stelt vragen aan onderzoekers PwC*), *Amigoe*, 29 May 2013.
[1250] CFATF, June 2012: 224.
[1251] On this case, see, for example, Judgment of 25 May 2012, District Court of Arnhem, LJN BW6504; 'Central Bank in defense against PP Arnhem' (*Centrale Bank in verdediging tegen OM Arnhem*), 10 April 2012 via www.rnw.nl [accessed 7 June 2013].
[1252] Official press statement of the Bank, Press statement (*Persbericht*) 2012-004, 10 April 2012.
[1253] See, for example, 'Bank president Emsley Tromp reviewed' (*Bank President Emsley Tromp doorgelicht*), *De Volkskrant*, 16 June 2012, via www.volkskrant.nl [accessed 2 June 2013].
[1254] Also refer to KLPD, Crime analysis of Curaçao 2008 (Criminaliteitsbeeldanalyse Curaçao 2008) (Zoetermeer: Korps Landelijke Politiediensten, Dienst IPOL, 2009), p.139.

of the Central Bank and the public prosecutor were not (re)appointed and Curaçao's first government fired the two other members, at the time of writing GCB's board only consists of two recently-appointed government candidates.[1255] One of the two board members, the chair, served some time as director as well.[1256] GCB's second board member has family ties with both the minister that appointed him and with a major player in the gaming industry who is a formal suspect in a criminal case involving money laundering and tax fraud.[1257] Advice provided on the appointment of an interim director for GCB also raise some critical points and contain 'serious objections' to GCB's recruitment procedure.[1258] On the positive side, at the end of April the public prosecutor did recommend a candidate for the board, which was supported by the minister of finance and did not result in serious objections of the corporate governance advisor.[1259] According to the records of the Chamber of Commerce, this candidate has not yet been added to the board.

In addition, and in line with the above, the casino sector appears to have undue influence over government policy and supervisory activities. Thus, for example, from May 2011 onwards, the minister of finance signed a 'Memorandum of Understanding' with the sector.[1260] This memorandum, which has not yet been implemented into legislation, includes several presumably favourable financial agreements[1261] and also allows the sector to propose draft Minimum Internal Control Standards (MICS), with a final say not for government or GCB, but for an 'independent international recognised party'. Parties also agreed that, whereas the casino ordinance is now only valid for at most three years,[1262] it is to be valid for ten years. Moreover, according to some, government also interfered explicitly with GCB's work, instructing GCB to withdraw audit teams and the tax authority not to cooperate with GCB to collect monies due.[1263] What the sector actually pays is undetermined.[1264]

As for MOT, in practice, CFATF reports that MOT's head has always been managing its database and the minister of finance has never interfered in the operational activities of MOT.[1265] The Guidance Committee, for its part, does not meet on a regular basis, and it is reported that when they met, these meetings were used to discuss annual reports, relevant legislative issues and personnel matters.[1266] At the moment, Transparency International was informed, in view of the findings of the CFATF, the Guidance Committee is not operative at all and has been non-existent for some time.

[1255] Judgment of 6 June 2011, Court of First Instance Curacao, LJN BR6145.
[1256] See, for example, SBTNO, Advies inzake benoeming interim directeur Stichting Gaming Control Board, 4 March 2013.
[1257] The advice of the (previous) corporate governance advisor on these appointments could not be found on its website.
[1258] SBTNO, Advice concerning recruitment and selection procedure and function profile director Gaming Control Board (*Advies inzake wervings- en selectieprocedure en profielschets directeur Gaming Control Board*), 14 November 2012; SBTNO, Advice concerning appointment interim director Foundation Gaming Control Board (*Advies inzake benoeming interim directeur Stichting Gaming Control Board*), 4 March 2013.
[1259] On 15 May 2013 the corporate governance advisor advised on this. See Advice wrt Advice concerning intention appointment mw. C.H. Hato-Willems as board member Foundation Gaming Control Board (*Advies inzake voornemen benoeming mw. C.H. Hato-Willems als Bestuurslid Stichting Gaming Control Board (art. 9. AB 2009 no.92)*), 15 May 2013.
[1260] Memorandum of Understanding between Curaçao and the Members of the Casino Association, Appendix to Country decree of 12 May 2011, No.11/0928.
[1261] Also refer to, for example, *Antilliaans Dagblad* of 16 October 2012, 'Wrong gamble' (*Verkeerd gegokt*), *Antilliaans Dagblad*, 16 October 2012.
[1262] Country ordinance Casino sector, Article 3.
[1263] Also refer to the Judgment of 6 June 201 of the Court of First Instance Curaçao, mentioned in the above.
[1264] ARC, October 2012b: 35. ARC mentions that the quarterly reports do not give a definite answer as to the sector's actual payments.
[1265] CFATF, June 2012: 8 and 81.
[1266] Ibid., 81.

Transparency (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE PUBLIC CAN OBTAIN RELEVANT INFORMATION ON ACTIVITIES AND DECISIONS OF THE SUPERVISORY INSTITUTIONS (PRIVATE SECTOR)?

There are provisions in place to ensure that the public can obtain information on CBCS's activities and decisions, although its supervisory activities are only partly covered. GCB and MOT are not required to make any information public.

CBCS's charter requires the Bank's monthly condensed balance sheet as well as the supervisory board's rules of procedure to be published in the official Country Gazettes. In addition, the Bank has a role in the production and dissemination of statistics.[1267] The Bank is also required to send its annual budget, report and account to Parliament for perusal, although the charter does not specify any deadlines to do so.[1268] The Bank's supervisory ordinances also require the Bank to ensure some transparency. Thus, for example, the Bank is required to publish a decision to grant and withdraw licences of credit institutions and insurance companies, and to do so as soon as possible. The Bank is also required to maintain a register of credit institutions licensed by the Bank, and make a copy of the register available at the Bank's office for inspection free of charge.[1269]

On the negative side, requirements to make information public are not identical across financial sectors. Most notably, the Bank is required to make public its yearly report to the ministers of finances on its activities and findings in the insurance sector. However, no such obligation exists in, for example, the banking sector.[1270]

As far as could be established, GCB is currently under no legal obligation to make any of its information publicly available. However, in its (non-binding) establishment memorandum it is recommended GCB report to Parliament (at that time, the *Eilandsraad*) on its activities within three months after the year ending. This report should include a description of relevant sector developments and a summary of the important decisions of the board, including licences issued and withdrawn. It should also, the memorandum suggests, include GCB's annual accounts.[1271]

MOT is also not required to make any information publicly available, with one important exception. MOT is required to inform anyone at his or her request whether and if so what personal data regarding this person are incorporated in the register, unless the proper execution of the task of the Reporting Office or weighty interests of third parties necessitate otherwise. CFATF has recommended revising the law 'to better protect the access to the database from individuals being the object of unusual transaction reports'. Transparency International was informed that since MOT's inception this article has never been used, and that the article will be deleted in the upcoming revision of the relevant ordinance.[1272]

[1267] Bank Charter, Article 17, 25 en 39.
[1268] Ibid., Articles 24, 37 and 38.
[1269] Cf. Country ordinance Supervision of the bank and credit institutions 1994, Country Gazette 1994. No. 4, Articles 7, 9 and 11; Country ordinance Supervision insurance industry, Articles 15 and 56.
[1270] Country ordinance Supervision insurance industry, Article 33.2 reads: 'the report shall be made public through the good offices of the Bank'.
[1271] Project team GCB, April 1999: 36-37. Also: Charter GCB, Article 11.
[1272] Country ordinance Reporting unusual transactions, Article 22; CFTAF, June 2012: 91; Also CFATF, October 2012: 32.

Also, CBCS, GCB and MOT are not required to report publicly on their supervisory activities and possible sanction decisions in connection to the identification of clients and the reporting of unusual transactions, although, in order to promote observance, they *may* bring to notice that a penalty is imposed.[1273] In addition, the three private sector supervisors are bound to several confidentiality clauses. Thus, for example, data and information on individual companies acquired under the provisions of the banking ordinance are declared secret.[1274] Also, standard regulations on public access to government information do not apply to CBCS and GCB, in the sense that CBCS and GCB are not administrative bodies with a duty to disclose. Because of the strict confidentiality rules, it is also questionable whether a request to an administrative body in possession of supervisors' documents – other than documents already required to be made public – in practice is likely to result in public disclosure. MOT itself is also subject to the strict confidentiality clauses included in the regulations on the reporting of unusual transactions.[1275] (Also refer to Integrity, below.)

Transparency (practice)

Score: 50

TO WHAT EXTENT IS THERE TRANSPARENCY IN THE ACTIVITIES AND DECISION-MAKING PROCESSES OF THE SUPERVISORY INSTITUTIONS (PRIVATE SECTOR) IN PRACTICE?

In practice the public can obtain information on CBCS's and MOT's activities. However, transparency of information specifically related to supervisory activities and decision-making processes is less provided for. Information on GCB's activities is not generally available, and not easy to obtain.

CBCS publishes its monthly condensed balance sheet in the Country Gazette as required, and also publishes it in local newspapers and on its website. Its annual report is also published on the Bank's website and sent to Parliament. CBCS's budgets over 2011, 2012 and 2013 were sent to Parliament; they are not, however, published on CBCS's website. Its account over (part of 2010 and) 2011 has yet to be adopted by the equity holders. The supervisory board's rules of procedure are only recently approved, in January 2013, and have yet to be adopted by the equity holders. More generally, CBCS has a website with a lot of content. Thus, for example, it provides some information on its organisation as well as access to annual reports, relevant legislation and regulatory framework, press notices, speeches, quarterly bulletins, statistics and so forth. The Bank's registry, which includes information on all financial institutions licensed to operate in Curaçao, can also be accessed on its website, as well as 'warning notices' on institutions which may be violating some regulations affecting the integrity of the financial sector.[1276]

Also, the Bank's annual report provides a lot of information about its sector findings and contains a concise chapter on the Bank's supervisory policy and activities, also providing some quantitative information. However, the Bank's annual reports do not provide much specific information on the Bank's own supervisory activities, for example, on its supervision of the banking or insurance sector related to corporate governance and integrity. Apart from some additional information included in individual documents on the Bank's site, such as speeches, the Bank does not publish more comprehensive information on its supervision policy and outlook, including its risk-based approach and its sanction policy, nor on its effectiveness.[1277] In the course of our assessment, it was suggested that the Bank's risk-based approach is likely to have an impact on its annual reporting in the future, and the Bank does provide some more information on, for example, its thematic reviews

[1273] Country ordinance Reporting unusual transactions, Articles 3 and 22e; Country ordinance Identification when rendering services, Article 9d.
[1274] Country ordinance Supervision of the bank and credit institutions 1994, Article 40.
[1275] Country ordinance Reporting unusual transactions, Articles 20 and 21.
[1276] www.centralbank.cw.
[1277] Also refer to CFATF, October 2012: 5.

in the area of AML/CFT in its reply to CFATF.[1278] However, so far more substantive information on its supervisory and sanction activities and policies – taking due account of confidentiality requirements – is only made public in a piecemeal fashion.[1279]

As for GCB, it is, as one expert indicated, 'most certainly not' the case that the general public has easy access to its information. GCB does not have a website, and the internet in general also does not provide access to a lot of information on GCB's activities. In addition, it has been suggested that data which were made public in the past, are not made public anymore. Moreover, there is no record of GCB's annual accounts sent to Parliament. There is no public register of casinos licensed.

MOT does have a website, and also provides information about its activities through trainings and public interviews. MOT's website also provides access to a lot of content and, for example, contains some general information about its organisation, annual reports, relevant legislation and regulatory framework, as well as warning notices. It also provides information on how to report, including direct access to its digital portal. In addition, MOT provides transparency in its activities in Curaçao's budget, which is made public in the course of the regular Curaçao budget procedures.[1280]

However, MOT's most recent annual report made public is that of 2009. More recent ones are reported to be in the final stages of completion but not yet published. In addition, although they do provide a substantial amount of information and contain a 'very complete set of statistics and graphs', according to CFATF, MOT's annual reports could include more information on money-laundering trends and typologies.[1281] Also, as mentioned in the above, MOT only gained supervisory powers from 2010, and now is the authorised body to monitor compliance of legal advisors, jewellers, real estate agents and car dealers with the regulations of the AML/CFT-framework. This also implies that, so far, MOT's reports did not provide a lot of information on its supervisory activities. Transparency International was informed that MOT will provide more information on these in its annual report over 2011.

Accountability (law)

Score: 50

TO WHAT EXTENT ARE THERE PROVISIONS IN PLACE TO ENSURE THAT THE SUPERVISORY INSTITUTIONS (PRIVATE SECTOR) HAVE TO REPORT AND BE ANSWERABLE FOR THEIR ACTIONS?

There are important legal provisions to ensure that CBCS and MOT are answerable for their actions, but the legal framework to hold them accountable for the use of the supervisory powers delegated to them is weak. The law has hardly any specific provisions that require GCB to report on and account for its activities.

CBCS is accountable to the equity holders of the Bank, that is, Curaçao and Sint Maarten, represented by the ministers of finance. In order to grant discharge to the board of executive directors, CBCS's externally-audited annual account is to be approved by the supervisory board, and in order to grant discharge to the supervisory board, the account is to be adopted at the annual meeting of the Bank's equity holders.[1282] This meeting is to be held within six months after the reporting year.[1283] Once adopted, only the financial statement must be sent to the ministers of

[1278] See for example CFATF, October 2012, Matrix, 33-36.
[1279] Cf. ARC, October 2012a: 29.
[1280] See, for example, Curaçao Budget 2013 and the explanatory memorandum to the budget, p.295 and further.
[1281] CFATF, June 2012: 83-84, 91; CFATF, October 2012: 32.
[1282] Bank Charter, Article 38.
[1283] Ibid., Article 32.

finance and Parliament for perusal.[1284] In addition, the Bank is required to publish a condensed balance sheet each month.[1285] ARC is also authorised to audit CBCS's financial management, but has not yet done so.[1286] The Bank must also present an annual report, although there are no specific requirements as to its content other than that it is to be on 'the previous year's financial-economic policy'.[1287] Moreover, the president is required to confer with the ministers of finance on the Bank's financial-economic policy at least once every three months, and there are some provisions which allow for more consultations between the boards, ministers and equity holders.[1288]

In addition, some of the sector-specific ordinances referred to in the charter require the Bank to annually report on its supervisory tasks. However, as mentioned above, not all sectors under the Bank's supervision are covered and the requirements are by no means uniform. There are also no specific regulations which require CBCS to account for its supervision of the financial sector's compliance with regulations on the identification of clients and the reporting of unusual transactions.[1289] Thus, although effective accountability in practice is not ruled out, the legal framework provides little assurance.[1290]

CBCS is not required to have a complaints or whistleblowing procedure, and, although there is a general provision that complaints against supervisors and other employees may be filed,[1291] there are no regulations comparable to the provisions for civil servants. (See on those, VII.4 Public Sector.) However, those under supervision of the Bank can act against a decision of the Bank, such as a decision not to issue a licence or to withdraw a licence. Depending on whether the Bank's decision is based on public or private law, either administrative or civil proceedings will have to be followed.[1292]

Neither the casino ordinance nor the ordinances on client identification and the reporting of unusual transactions or any other formal regulation require GCB to report on and account for its supervisory activities.[1293] However, GCB's charter requires its directors to send GCB's annual accounts to the board by 1 April, accompanied by a report of the administration's internal auditor, SOAB.[1294] ARC is also authorised to audit GCB financial management. However, there is no management agreement between GCB and the government.[1295]

GCB is not required to have a complaints procedure and, as far as could be established, regulations such as those for civil servants are not provided for. However, similar to CBCS, those under GCB's supervision can act against a decision to refuse or invoke a licence, or against the enforcement of an administrative order. They can also object to an assessment (*aanslag*) of GCB.[1296] In addition, because GCB is a public foundation, there are some general civil law provisions to hold GCB accountable including, as of 1 January 2012, a civil inquiry procedure as discussed in the chapter on the Executive above.[1297]

[1284] Bank Charter, Article 38.
[1285] Ibid., Articles 38 and 39.
[1286] Cf. Country ordinance General Court of Audit Curaçao (*Landsverordening Algemene Rekenkamer Curaçao*), Official Curaçao Gazette 2010, No.87, Appendix h, Articles 25, 29 and 41.
[1287] Bank Charter, Article 24 and the explanatory memorandum to that article.
[1288] Ibid., Article 32 and the explanatory memorandum to that article.
[1289] The country ordinances involved only require MOT to report on its activities.
[1290] Cf. ARC, October 2012a: 27.
[1291] Regulations Terms of Employment Personnel Bank Netherlands Antilles (*Reglement arbeidsvoorwaarden personeel Bank Nederlandse Antillen*), 1 February 1989.
[1292] Administrative proceedings are based on the country ordinance Administrative law (*Landsverordening Administratieve rechtspraak*), Country Gazette 2001, No.79.
[1293] Compare country ordinance Casino sector, Article 2 and Island decree appointing body casino sector, Article I.
[1294] GCB Charter, Article 11.
[1295] Cf. Project team GCB, April 1999: 36-37. Also: Charter GCB, Article 11.
[1296] See, for example, country ordinance Casino sector, Articles 22, 23d and 23e.
[1297] Civil Code, Book 2, Articles 54, 55 and 271.

MOT is to submit an annual report on its activities and its plan for the following year to the minister of finance. There are no specific requirements as to the content of this report, but it is understood it is to cover MOT's supervisory activities as well. MOT is required to also bring its annual report to the notice of the minister of justice, but there is no such obligation to Parliament.[1298] As an administrative unit, MOT's financial management is subject to the control of SOAB and ARC as part of the regular Curaçao accountability process, and accounted for in Curaçao's annual accounts to Parliament.[1299]

MOT does not have a specific complaints procedure, but because MOT is an administrative unit, general civil servants regulations do apply.[1300] In administrative proceedings, those under MOT's supervision can act against its decisions, such as those related to administrative sanctions. (Refer to VII.4 Public Sector for a more detailed discussion.)

Accountability (practice)

Score: 25

TO WHAT EXTENT DO THE SUPERVISORY INSTITUTIONS (PRIVATE SECTOR) REPORT AND BE ANSWERABLE FOR THEIR ACTIONS IN PRACTICE?

The lack of effective communication between the different relevant equity holders, directors and boards implies accountability of CBCS is not ensured in practice. It is unknown whether or not this also applies to GCB. On the positive side, standard annual (financial) reporting appears adequately provided for, albeit sometimes with delays. MOT's accountability is adequately ensured in practice.

CBCS's budgets for 2011 and 2012 were approved by the Bank's supervisory board, albeit both with delays of many months into the budgetary years concerned. The budget for 2013 was approved in February 2013. As required, the budgets have been sent to the equity holders, the minister of finance and Parliament for perusal. Its annual account over (part of 2010 and) 2011 was audited by an external accountant and has been approved by the supervisory board in the course of 2012. At the time of our assessment, both the accounts and the accounting principles they were based on had yet to be adopted by the equity holders. CBCS's annual report, which does not require approval and adoption of the supervisory board and equity holders, was sent to Parliament and is, as reported above, published on its website.

Also, the Bank does report annually to the ministers of finance as required on the insurance sector, in ways similar to the reporting in its public annual report. However, as far as could be established, the Bank does not account for its supervisory policy or its own supervisory activities in much more detail than the information provided in its annual reports. (Also see under Transparency.) In part, as several experts noted, this is to be understood in light of the confidentiality restrictions necessary for the Bank to perform its duties, which makes balancing the essential operational independence of the Bank and a sufficient degree of accountability challenging. So far, as was also underscored in the aforementioned ARC report, CBCS does not proactively account for the use of its supervisory powers and the effectiveness of its supervision.[1301] Moreover and more generally, ARC also reported that, because of a lack of information, it was not able to adequately judge the functioning of the institution.[1302]

[1298] Country ordinance Reporting unusual transactions, Article 3.
[1299] Cf. country ordinance Government accounts.
[1300] Country ordinance regulating the legal and material rights and obligations of civil servants, Article 80 and Sections 15 and 16.
[1301] ARC, October 2012a: 3-6.
[1302] ARC, October 2012a: 5.

Effective accountability is also hampered because communications within and between the relevant bodies were suspended for some time or still are. For one, Parliament did not invite the Bank's president to present the Bank's annual report during Curaçao's first cabinet, and as yet has not discussed ARC's report, sent to Parliament on 31 October 2012. Communications with the Curaçao Council of Ministers similarly stalled, although they appear to have been restored after the resignation of the first Curaçao cabinet.[1303] Communications within the board of executive directors also does not always appear to be functioning and consensus not always achieved, although from the information available it is difficult to establish to what extent these are incidents or have a more structural character.[1304] Communications between the president and several members of the supervisory board, in particular the three members from Curaçao, have not yet been restored. In September 2012, the members of the supervisory board appointed at the recommendation of Curaçao formally announced they had lost confidence in the Bank's president, and would refuse to sit in at meetings of the supervisory board until the president would make himself available for an 'integrity test', and take a leave of absence in the meantime.[1305] At the time of writing, the supervisory board still only convenes with four instead of seven members and, as mentioned, the three Curaçao members do not consider board decisions taken by these four members to be legal. Recently, after several months of discussion as to the scope and content, the Curaçao and Sint Maarten ministers of finance announced an integral inquiry by a Dutch accountancy firm into the functioning of the two boards.[1306] This inquiry is currently on-going. Whether or not it will be sufficient to return effective communication is uncertain. Although the board of executive directors is reported to have confirmed its cooperation, the supervisory board is not uniformly nor wholeheartedly in support of the inquiry.[1307]

In practice, GCB does have its annual accounts audited by SOAB, although according to one expert interviewed this always resulted in adverse opinions.[1308] These accounts are also reported to have been submitted to the minister of finance, although not always within the prescribed time period. GCB does not produce annual reports and a substantive account of its supervisory activities is not provided for. However, lengthy explanatory notes to the budget, including information on GCB's supervisory results, are said to have somewhat compensated for this lack. Also, some years ago an operational audit was performed, as well as a study outlining foreseeable future developments and their impact on GCB. Up to now, follow-up discussions with government hardly ever took place, positive exceptions notwithstanding. There is no record of GCB accounting for the use of its sanctioning powers and the effectiveness of its supervision.

MOT's annual accounts are audited through the regular Curaçao auditing channels and eventually sent to Parliament. MOT is reported to have regular internal financial reviews, controls and audits that examine its expenditures, programmes and effectiveness. MOT is reviewed at least twice a year by its account manager at the Ministry of Finance on its expenditures in relation to its budget.[1309] In principle and as required, MOT submits its annual report each year for approval to the ministers of finance and justice. Once approved, it is made public and published on MOT's website.

As mentioned, MOT has not published much information so far about its only recently-allotted supervisory task, but, as referred to above, it is expected to account for its supervisory activities in its report over 2011.

[1303] See, for example, Commissie onderzoek Curaçao, September 2011: 17.
[1304] See, for example, Curaçao members supervisory board boycott meetings (*Curaçaose leden RvC Centrale Bank boycotten vergaderingen*), *Amigoe*, 18 April 2012.
[1305] See, for example, 'Commissioners abandon confidence in Tromp', *Amigoe*, 10 October 2012.
[1306] See, for example, 'Audit at central Bank in accordance with terms of reference', *Amigoe*, 3 February 2013.
[1307] See, for example, 'RvC postpones decision inquiry CBCS' (*RvC houdt besluit onderzoek CBCS aan*), *Amigoe*, 7 May 2013.
[1308] See, for example, SOAB, Annual Report 2011: 17.
[1309] CFATF, June 2012: 82-83. Also MOT, Annual Report 2009: 43.

Integrity mechanisms (law)

Score: 75

TO WHAT EXTENT ARE THERE MECHANISMS IN PLACE TO ENSURE THE INTEGRITY OF THE SUPERVISORY INSTITUTIONS (PRIVATE SECTOR)?

CBCS, GCB and MOT all have several provisions in place (although some more than others) which aim to ensure the integrity of the institutions, and strict confidentiality rules apply.

The integrity rules for civil servants do not apply to board members and personnel of CBCS. However, the Bank has several regulations of its own, including provisions related to gifts and incompatibilities. Thus, for example, board members and employees are required not to accept or request gifts which he/she understands are given in return for doing or not doing something in his/her official function,[1310] and additional regulations further detail how employees are expected to deal with gifts.[1311] Also, employees are not allowed to engage in additional functions or act as, inter alia, advisor of relations of the Bank without prior approval of the Bank[1312] and an employee is not to engage in other salaried work or his own business without prior written approval of the board.[1313] Deputy directors and supervisory personnel, inter alia, are required to sign an agreement containing additional requirements related to incompatibilities, including an annual notification requirement of additional functions and activities.[1314] There are no additional regulations related to additional functions and activities for board members, other than the one referred to in the section on Independence.

Also, in those cases where the Bank may enforce administrative orders with periodic penalty payments or a penalty, there are rules to ensure that those involved with investigating or establishing a violation are not the same as those involved in sanctioning such violation.[1315] Moreover, CBCS board and personnel have a general duty of confidentiality,[1316] and have to abide by the specific – and varying – confidentiality rules incorporated in the different supervisory regulations.[1317] The legislation on the reporting of unusual transactions also contains a confidentiality clause, violation of which can be prosecuted as an offence. However, the Bank is authorised to inform the Reporting Office of MOT of facts which come to light in the performance of its duties that could possibly indicate money laundering or the financing of terrorism (but not other supervisors as mentioned in that legislation).[1318]

The integrity rules for civil servants also do not apply to board and personnel of GCB, and GCB does not have a comprehensive code of conduct. Instead, its rules on integrity are reported to be scattered across GCB's employment contracts, the establishment document and legal provisions, although not all of this could be assessed independently. Thus, for example, confidentiality is

[1310] Regulations terms of employment board Bank of the Netherlands Antilles (*Reglement arbeidsvoorwaarden directie Bank van de Nederlandse Antillen*), February 1989; Regulations Terms of Employment Personnel Bank of the Netherlands Antilles (*Reglement arbeidsvoorwaarden personeel Bank Nederlandse Antillen*), February 1989. Employees are those employed at the Bank for at least 20 hours per week.

[1311] Regulation acceptance of gifts BNA (*Regeling aannemen van geschenken BNA*), February 2004. Also see Professional regulations for supervisory personnel, September 1995.

[1312] Regulations terms of employment personnel Bank Netherlands Antilles. Also see Professional regulations for supervisory personnel, September 1995.

[1313] Regulations terms of employment personnel Bank Netherlands Antilles.

[1314] Regulation Incompatibilities Bank of the Netherlands Antilles.

[1315] See for example country ordinance Reporting unusual transactions, Article 22f.

[1316] Bank Charter, Article 31 (Board members) and Regulations Terms of employment personnel Bank Netherlands Antilles.

[1317] Compare, for example, country ordinance Supervision insurance industry, Article 78; country ordinance Supervision of the bank and credit institutions 1994, Part VIII; and country ordinance Reporting unusual transactions, Chapter V.

[1318] Country ordinance Reporting unusual transactions, Article 20. Cf. CFATF, June 2012: 133-135.

required for information received in the course of performing supervisory and other prescribed tasks, and employment contracts are reported to reinforce this, but in ways similar to CBCS, the AML/CFT-rules do allow for the sharing of information with the Reporting Office.[1319] Also, GCB's employees are not allowed to participate in hazard games, and must perform their duties 'with diligence and indiscriminately'.[1320] In those cases where GCB may enforce administrative orders, again in ways similar to CBCS, there are provisions to allow for a proper division of responsibilities between supervisors and those involved in sanctioning.[1321] And although not firmly established in law, GCB's establishment memorandum states that board members, directors and all other personnel of GCB are to be screened.[1322] As far as could be established, the existing rules do not cover rules on additional functions or gifts.

MOT's employees, including its director, are civil servants, and as such civil servants rules on integrity apply. Thus, MOT's personnel have to abide by rules such as those related to additional jobs, gifts and hospitality, and financial interests. (For a more detailed discussion on these, refer to VII.4 Public Sector.) MOT personnel are also bound by the civil servants rule on confidentiality as well as to the confidentiality clauses in AML/CFT-regulations. The Reporting Office is allowed, however, to share information with supervisory bodies, but – awaiting announced amendments of the relevant legislation – at this moment MOT in its supervisory capacity is not allowed to do so.[1323] In those cases where MOT may enforce administrative orders, the same rules as mentioned for CBCS and GCB apply.[1324]

Integrity mechanisms (practice)

Score: 50

TO WHAT EXTENT IS THE INTEGRITY OF THE SUPERVISORY INSTITUTIONS (PRIVATE SECTOR) ENSURED IN PRACTICE?

Staff screening mechanisms are in place and CBCS, MOT and to a lesser degree GCB are reported to pay regular attention to integrity issues. However, due to a lack of sufficient information it cannot be adequately assessed whether the integrity of the institutions is ensured in practice.

In practice, CBCS appears to give adequate attention to integrity issues. For example, prospective staff of CBCS are reported to be carefully selected based on their educational background, training, expertise and integrity, and must observe the codes of conduct. Part of the selection process is an integrity screening involving the Security Service Curaçao *(VDC – Veiligheidsdienst Curaçao),* and screening continues for specific positions and at regular intervals when employed at CBCS.[1325] Also, an independent integrity commission within the Bank advises the board of executive directors on the levying of sanctions, and operates separately from those involved with investigating a violation.

[1319] Country ordinance Casino sector, Article 25; country ordinance Reporting unusual transactions, Chapter V; CFATF, June 2012: 225.
[1320] Country ordinance Casino sector, Articles 7 and 23.
[1321] Country ordinance Reporting unusual transactions, Article 22f. Also Island Decree appointing body Casino sector and Island Decree of 4 December 2002 to effectuate article 23, first clause of the Island ordinance Casino sector Curaçao (OCG 1999, No.97) (*Eilandsbesluit, houdende algemene maatregelen van de 4de December 2002 ter uitvoering van artikel 23, eerste lid, van de Eilandsverordening Casinowezen Curaçao (A.B. 1999, no.97))*, Official Curaçao Gazette, 2002, No.85;Official Curaçao Gazette 2009, No. 60 and the relevant regulations in the country ordinance Casino sector.
[1322] Project team GCB, 1999: 14.
[1323] CFATF, June 2012: 134-135; CFATF, October 2012: 16
[1324] Country ordinance Reporting unusual transactions, Article 22f.
[1325] CFATF, June 2012: 88, 157, 225; ARC, October 2012a: 13. This is further detailed in the Bank's Regulations regarding screening personel (*Regeling inhoudende screening personnel*), concept 15102009.

However, whether or not the Bank's internal integrity rules, as mentioned in the previous section and in the section on Independence, are in practice observed could not be confirmed. According to ARC, it remains 'uncertain' whether the integrity rules are observed in practice, and, if not, whether they are sanctioned.[1326]

Alleged integrity issues have, however, been widely debated. As referred to above, the position of the Bank's president has been subject of debate. The according to some members go-it-alone functioning of the chairperson of CBCS's supervisory board has also been contested in a resolution of the supervisory board.[1327] Moreover, in some cases, charges have been pressed against the president of the Bank, and in one case, such pressing charges were also announced against the supervisory board. However, so far, in at least one case, the Public Prosecutor's Office announced it did not see reason for further investigation,[1328] no cases have been brought to court and, as mentioned above, some of the allegations against the president appear to have been sufficiently countered.[1329] Other allegations remain unresolved and are fuelled by the on-going media coverage. Pending the outcome of the on-going operational audit, there is insufficient information on which to adequately base our assessment.

All prospective employees of GCB are screened by the VDC, although for board members this responsibility lies with government.[1330] GCB is also reported to periodically issue internal memos with procedures on the required behaviour of its personnel. Integrity training has not been organised, but is reported to be considered, and it was suggested in our assessment that in those cases of violation of ethical standards, personnel was either suspended or fired.[1331] However, because of the loopholes and weaknesses identified in the section on Independence and Transparency, there is insufficient evidence to suggest that the integrity of the institution is ensured in practice.

MOT's prospective employees are also reported to be screened by the VDC, and those employed are also screened on a regular basis. Whenever individuals from other institutions perform activities for MOT, they are required to sign a secrecy statement.[1332] MOT's staff members are also regularly trained on integrity issues, and no breaches of ethical standards by MOT's staff were reported.

Role

Effective integrity supervison (law and practice)

Score: -

TO WHAT EXTENT DO THE SUPERVISORY INSTITUTIONS (PRIVATE SECTOR) PROVIDE EFFECTIVE INTEGRITY SUPERVISION?

Curaçao's legal framework allows for effective integrity supervision, although some issues need to be addressed to fully comply with international standards. CBCS, GCB and to a lesser extent MOT perform integrity audits in practice, but due to a lack of publicly-available information on process, outcome and effects, their effectiveness cannot be determined.

[1326] ARC, October 2012a: 14.
[1327] 'Resolution against chairperson RvC Central Bank' (*Resolutie tegen voorzitter RvC Centrale Bank*), 21 August 2012 via www.kkcuracao.com.
[1328] See, for example, Commissie onderzoek Curaçao, September 2011: 16.
[1329] See ARC, October 2012a: 6-7.
[1330] Also refer to SBTNO, November 2012: 2. CFATF, June 2012: 225. Cf. Project team, April 1999: 14.
[1331] CFATF, June 2012: 226.
[1332] Ibid.,: 225, 88.

Integrity supervision, as also described by CBCS in one of its policy rules, may include such broad issues as personal integrity, organisational integrity and relational integrity of the businesses under supervision. The first refers to integrity of directors and personnel, the second to internal procedures and controls to safeguard integrity, and the third to integrity related to dealings with – possibly fraudulent – third parties.[1333] Curaçao's legislative framework covers many of the relevant aspects, both related to the licensing procedures as well as on-going business. This is especially true for CBCS, which has a long track record of integrity supervision. Its supervision on personal integrity is based on integrity rules for directors and staff, including rules to prevent conflicting interests and with special attention for politically-exposed persons.[1334] Its supervision on organisational integrity is based on corporate governance guidance notes and statements on best practice, as well as policy rules on organisational measures to promote sound business operations and manage integrity risks.[1335] Relational integrity is covered by AML/CFT-regulations and more general 'know-your-customer' principles. GCB's legal framework, although not as extensive as that of CBCS, also allows for the supervision of both personal integrity, organisational integrity and relational integrity. Thus, in addition to screening issues related to licensing, rules may be established to guarantee an honest and reliable game, to prevent fraud and abuse, or to set standards for casinos' administrative organisation and their accounts.[1336] MOT only operates as supervisor based on AML/CFT-regulations, and is only authorised to supervise relational integrity.

However, there are some issues that deserve further attention. For example, in its recent report, CFATF concludes the threshold for identification requirements in casinos is too high. CFATF also reports that the requirements for on-going due diligence in business relationships and reduced (not full) client due diligence in low-risk situations are not being fully met.[1337] In addition, although more non-financial professionals have been brought within scope of the regulations, the legislative framework in place for the supervision of the financial integrity of the private sector does not cover everything. Most notably, there is no supervisory programme in place to ensure non-profit organisations' compliance with integrity regulations, and, as also pointed out at the beginning of this chapter, there is no integrity supervision on internet casinos or on any other part of the gaming industry except for casinos. Moreover, although GCB has issued guidelines for the sector, the Minimum Internal Control Standards, there are, as mentioned before, some legitimate concerns related to the process which was started to adapt these guidelines (see also under Independence).[1338]

In practice, both CBCS and GCB follow specific screening procedures, involving many personnel integrity checks of those under their supervision. CBCS maintains an Integrity Financial Service Register, which in 2011 contained information about 3,100 subjects. Each year, CBCS conducts many integrity tests, some for the first time, and others as part of a regular three-year cycle of integrity testing. In cases of doubt, cases are officially disclosed and dealt with by the Bank's integrity commission. This may result in a negative test because of serious integrity doubts. In 2011, six cases resulted in such a negative test, and two cases resulted in official warning notice on the Bank's website.[1339] GCB has its own screening procedures, which includes personal integrity checks of all those involved in the casino licensing by the VDC. GCB also looks at financial solvency and

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[1333] Cf. CBCS Policy rule for sound business operations in the event of incidents and integrity sensitive positions (January 2011), p.1-2, on www.centralbank.cw [accessed 23 February 2013].
[1334] See CBCS Policy rule on integrity testing, Regulation on the number of (co)policy positions permitted per person (*Beleidslijn voor Betrouwbaarheidstoetsing van locale PEP's*), on www.centralbank.cw [accessed 23 February 2013].
[1335] CBCS Policy rule for sound business operations in the event of incidents and integrity sensitive positions, p.1.
[1336] Country ordinance Casino sector, Articles 12 and 7. Cf also CFATF, p.51 on customer acceptance policies and procedures, also on PEPs.
[1337] CFATF, June 2012: 6, 196.
[1338] Also refer to ARC, October 2012b: 36; SBTNO, March 2013.
[1339] CBCS Annual Report 2011.

reliability and knowledge and skills regarding casinos. These requirements for initial licensing are also applied for annual renewal of the casino and personal licences.[1340]

CBCS and GCB also conduct regular on-site and continuous off-site investigations, and use the information received for their organisational and relational integrity audits. Thus, for example, CBCS reports that it uses exit interviews with external auditors, well as the periodically-filed management reports which include regulatory issues and compliance.[1341] In addition, GCB has a technical team which is responsible for physically monitoring operations of casinos on a daily basis.[1342] GCB is also reported to audit routinely all casinos annually,[1343] although the memorandum of understanding suggested this is to be less frequent, suspicion of foul play or audits on a random selection basis aside.[1344] Recently, GCB indicated it also intends to carry out audits of the financial statements of casinos.[1345] MOT conducted 'a pilot programme of test audits', which was used as a learning exercise. Its own supervisory activities, until recently, mainly concerned assisting other supervisory authorities in presentations for reporting entities.[1346] However, Transparency International was informed that MOT has now started its regular audit investigations, which may result in sanctions.[1347]

Whether or not the above implies CBCS and GCB provide effective audits, however, is unknown, and for MOT somewhat premature. The amount of specific, publicly-available information related to the process, outcome and effects of integrity supervision is limited. CBCS does provide some information in its annual reports, MOT (so far) less, and GCB none, and none of the available information on supervisory activities performed can be labelled 'comprehensive'. And although those supervised generally speak of effective oversight, some conclusions drawn do not point in the same direction. ARC concludes that the design of the Bank's supervision is adequate, but it adds that it has not been able to confirm whether the stated design in practice actually exists due to a lack of available information.[1348] In addition, specifically related to AML-supervision, CFATF does rate the relevant supervisory powers as largely compliant with the CFATF-recommendations, but also finds that 'the limited number of AML on-site inspections do not definitely demonstrate adequacy of supervisory powers', and recommends that it covers more licensed institutions within its risk-based approach and includes a file review.[1349] It re-iterates the point of the effectiveness of the Bank's risk-based approach in a follow-up report.[1350] As for MOT, CFATF points to some effectiveness issues, and concludes that as of yet it has not put in place an effective supervisory regime to monitor compliance with AML/CFT-regulations.[1351] (But see above on 2013).

[1340] CFATF, June 2012: 199. Also refer to Project team GCB, April 1999.
[1341] Policy memorandum on the change of external auditors of a credit institution and Policy memorandum in the periodic filing of a management report, via www.centralbank.cw [accessed 7 June 2013].
[1342] CFATF, June 2012: 200. Also refer to Project team GCB, April 1999.
[1343] CFATF, October 2012: 23. Also refer to CFATF, June 2012: 200.
[1344] Memorandum of Understanding annexed to Country decree of 12 May 2011, No.11/0928, 'Auditing and aim of MICS'.
[1345] CFATF, October 2012: 8 and 23.
[1346] For example, MOT, Annual Report 2009, p.43.
[1347] Cf. CFATF, June 2012: 187; CFATF, October 2012: 10.
[1348] ARC, October 2012a: 6.
[1349]CFATF, June 2012: 11, 181, and 203; also156-157 and 160. Also see CFATF, October 2012: 33-35 and 10.
[1350] CFATF, October 2012: 5 (point 6) in relation to 10 (recommendation 24).
[1351] CFATF, June 2012: 92 and 187; also refer to for example 76-88, 147 and 259.

Detecting and sanctioning misbehaviour (law and practice)

Score: 50

DO THE SUPERVISORY INSTITUTIONS (PRIVATE SECTOR) DETECT AND SANCTION MISBEHAVIOUR OF THOSE ACTING IN THE PRIVATE SECTOR?

CBCS, GCB and MOT have broad powers to identify and sanction misbehaviour and corruption, with some weaknesses related to the lack of harmonised legislation and interaction between supervisors. In practice, however, little to no concrete misbehaviour is detected and/or sanctioned.

CBCS, GCB and MOT all have broad powers to identify misbehaviour and corruption. Under AML/CFT-regulations, all three are allowed to use a broad set of investigative methods. Thus, for example, they may request information and are allowed to enter all places required, including, albeit under certain conditions, private homes.[1352] The other supervisory regulations of CBCS and GCB provide some additional powers, such as, in the case of GCB, to be present in a casino during opening hours.[1353] Since 2010, all three supervisors also have a range of powers to sanction non-compliance with AML/CFT-regulations, and, in GCB's case, since 2009, with casino-regulations. They may use instructions and administrative sanctions, that is, periodic penalty payments, administrative fines and the publication of such orders for payments or fines. Alternatively, because non-compliance and non-cooperation is a punishable act, they may refer a case for criminal investigation or prosecution.[1354] In addition, GCB may use administrative enforcement, such as sealing of locations,[1355] and CBCS and GCB may opt to withdraw licences granted under the different sector-specific regulations.

However, there is room for improvement of the legislative framework. Exchange of information between supervisors and other agencies is only partly provided for, and interpretation of the rules is subject to debate. Thus, for example, although the AML/CFT-regulations do provide for some exchange of information, as mentioned, CFATF concludes that neither CBCS, GCB nor MOT in its supervisory capacity can exchange information with each other.[1356] In addition, CBCS's regulatory framework is in need of harmonisation. This issue has been on the agenda for some time and has resulted in a draft Harmonisation and Actualisation of Supervision Ordinances Curaçao and Sint Maarten. So far, however, it has not led to a new regulatory framework and, largely because legislation was enacted in different time periods, CBCS's powers to investigate and sanction misbehaviour – other than those granted under CFT/AML-legislation – differ from sector to sector.[1357]

Furthermore, in practice, little or no concrete misbehaviour is sanctioned. Regarding CBCS's supervision of financial institutions, CFATF concluded that 'the effectiveness of the range of sanctions available for non-compliance with [AML/CFT] requirements cannot be determined given the limited employ of such'.[1358] More generally, although indeed there are some examples of emergency measures and revoked permits because of mismanagement, the Bank does not often

[1352] Country ordinance Reporting unusual transactions, Article 22h and the comparable article in the country ordinance Financial services identification.
[1353] Cf. country ordinance Casino sector, Article 23b. Also refer to country ordinance Supervision bank and credit institutions, Articles 46 and 50.
[1354] Cf. country ordinance Reporting unusual transactions, Article 22h and Article 23 and country ordinance Casino sector, Article 26.
[1355] Country ordinance Casino Sector, Article 23d.
[1356] Cf. CFATF, June 2012: 10, 133-135. Also refer to ARC, October 2012a.
[1357] CBCS Annual Report 2011: 54. Also refer to ARC, October 2012a: 11 and S.M. Alterna (2011), 'The Antillean constitutional reforms and the consequences for financial supervision' (*De Antilliaanse staatkundige hervorming en de gevolgen voor het financiële toezicht*). In: Financial sector and international private law, p.191.
[1358] CFATF, June 2012: 181.

turn to sanctions. Thus, regarding the Bank's regular integrity supervision, including but beyond AML/CFT supervision, CFATF reports that '(w)henever insufficient compliance with the laws is detected, [the Bank] has primarily used moral suasion to bring about corrective action'.[1359] Moral suasion may in certain cases be effective and it may also be efficient, given that the Bank reportedly has to go through a cumbersome process to actually collect sanctions in case of non-payment. However, whether it in fact *is* effective, cannot be determined.[1360]

GCB was established to focus more on preventive controls combined with tough sanctions in case of overstepping the line.[1361] GCB's directors are charged with the actual supervision, whereas GCB's board is responsible for sanctioning.[1362] However, CFATF reports that GCB has not yet imposed a sanction on a casino for contravention of the MICS.[1363] Transparency International has not been able to obtain sufficient information to assess whether GCB has or has not invoked or refused renewal of any licences to date. If lack of sanctioning is due to compliance of the sector, this is to be applauded. However, given that the sector has not always been willing to adhere to the norms incorporated in the law and against the background of the 2011 memorandum of understanding,[1364] a lack of sanctioning is a reason for concern. According to CFATF, focusing on AML/CFT compliance, 'while the implementation of AML/CFT audits on casinos is a positive step in the supervision of casinos, compliance with the Examiners' recommendation should focus on the issue of the sanctions which will need to be addressed in a more definite way'.[1365]

MOT, in its capacity as supervisor, as mentioned above, has only recently started its regular audit investigations and has not yet considered the imposition of sanctions.

1359 CFATF, June 2012: 175.
1360 Also refer to ARC, 2012a: 22.
1361 Cf. Project team GCB (April 1999): 6.
1362 Island Decree appointing body Casino sector and Island decree of 4 December 2002 to effectuate article 23, first clause of the Island ordinance Casino sector Curaçao (OCG 1999, No.97) (*Eilandsbesluit, houdende algemene maatregelen van de 4de December 2002 ter uitvoering van artikel 23, eerste lid, van de Eilandsverordening Casinowezen Curaçao (A.B. 1999, no.97))*, Official Curaçao Gazette, 2002, No.85.
1363 CFATF, June 2012: 187-188.
1364 See for example, Casinos ignore rules of the game (*Casino's negeren spelregels*), *Antilliaans Dagblad*, 18 May 2011.
1365 CFATF, October 2012: 9.

VIII. CONCLUSIONS AND RECOMMENDATIONS

Between 2012 and 2013, Transparency International conducted a National Integrity System (NIS) assessment on Curaçao. The purpose of this is to assess systemic corruption risks faced by Curaçao and produce a set of recommendations on how to mitigate those risks in the future. This final chapter first presents an overview of the strengths and weaknesses across Curaçao's National Integrity System, including those vulnerabilities which arise through the interplay between the different pillars. It then discusses the key strengths and weaknesses pillar by pillar, before presenting a set of recommendations for strengthening the integrity system and reducing corruption risks in Curaçao.

Systematic weaknesses in the Curaçao National Integrity System

The National Integrity System concept presupposes that a weakness in a single institution could lead to serious flaws in the entire integrity system. Thus, the interplay between pillars is a key part of assessing the system's overall strength.

The legal framework governing Curaçao's National Integrity System can be described overall as strong. In the run-up to the constitutional changes in 2010, and in some cases after October 2010, the legislative framework was gradually strengthened to support an effective integrity system. Nevertheless, several important pieces of legislation that were in place before the change in constitutional arrangements are now missing and a number of inconsistencies in the legal framework are apparent. At present, financial provisions for members of Parliament and for the Executive are mostly unregulated, and the legislative framework that was in place for public procurement no longer is. In practice, different types of solutions appear to have been found, but this should not remove the sense of urgency to adopt these and other pieces of 'missing' legislation. Moreover, this assessment returned several inconsistencies and loopholes in the legislation that *is* in force. Thus, the discrepancies between the explanatory memorandum of the ordinance on political party finances and the ordinance itself prohibit a clear understanding of the spirit of the law. Also, the provisions regulating the appointment procedures and the authorities of members of the electoral management body need to be addressed. Finally, there are several draft pieces of legislation to improve the existing legal framework that need to be pushed through the system, such as the draft harmonisation of supervision ordinances of the financial sector.

Of equal concern is the fact that existing legislation is not yet applied consistently in practice, and those who are responsible for the execution of the laws or are required to comply with them do not always know how to do so. This is particularly true with regard to transparency, where much of the information which is legally required to be made public, such as implementation reports, personnel decisions and other administrative decisions, is not consistently or systematically published.

In terms of the pillars themselves, the Curaçao National Integrity System is currently characterised by the strength of three public watchdogs: the judiciary, the Ombudsman, and the supreme audit and supervisory institutions (public sector). However, their performance to a large degree is undermined by weaknesses in other pillars. In particular, weak internal governance within political parties impinges on the independence of the legislature, the Executive and the public sector, suggesting critical deficiencies at the core of the integrity system.

In the Curaçao National Integrity System, party discipline governs both acts of members of Parliament as well as those of the Executive, blurring the constitutionally-prescribed division of powers. Parliament in practice does not operate independently, but instead is widely considered to operate as a 'rubber stamp'. Whereas the independence of members of Parliament is firmly enshrined in the constitution to ensure Parliament represents *all* the people of Curaçao, the logic of 'a party political mandate' is firmly embedded in the Curaçao political landscape in practice. Similarly, political interventions leave little room for manoeuvre for the Executive in its decision-

making processes. Because of this weakness, the inevitable and necessary nuances temporarily put aside, Curaçao's parliamentary democracy has not yet sufficiently evolved into a system which adequately represents the electorate. Instead, sometimes, it resembles a system in which today's winners – backed up by their extended families, business partners, party financers and voters – try to exploit legislative and executive power temporarily granted to further *specific* interests. As a result, the rights of the large minority are insufficiently safeguarded.

Party discipline, however, cannot, be sustained at all times, and the Curaçao National Integrity System is also characterised by a political landscape with changing coalitions, in which today's small majority governing the country may be tomorrow's large minority in Parliament. In essence, the latter is considered to be a good thing, because it is one of the few existing mechanisms to ensure that the Executive is held to account.

Nevertheless, the accountability of the Executive remains weak in practice. This, in turn, undermines the capacity of the public sector to operate effectively. For example, the Executive exerts strong influence on appointments in the public sector as well as on its output, including some examples of direct interference in administrative matters. Furthermore, the specific circumstances of the new constitutional relations, requiring two executive layers to be merged into one, have not resulted in an enhancement of the public sector's performance to date.

Because these institutions do not function well, in practice much of the work of the well-functioning oversight institutions, most prominently the judiciary, the supreme audit and supervisory institutions as well as the Ombudsman, is undermined. For example, many of the recommendations of the supreme audit and supervisory institutions and the Ombudsman lack follow-up and court decisions are not sufficiently enforced. Furthermore, the lack of adequate complaints mechanisms within the administration creates a high demand on the Ombudsman's services and limits the ability of the Ombudsman to investigate more proactively. The slow pace of reform in Curaçao's financial management framework, meanwhile, results in ineffective financial audits. Additionally, while the judiciary has the authority to penalise offenders in corruption-related cases, it is dependent on the Public Prosecutor's Office to bring cases to court. The Public Prosecutor's Office, in turn, is to a large extent dependent on prosecutions instigated by law enforcement agencies. The lack of sufficient financial and human resources within the police forces creates a high demand on the services of Public Prosecutor's Office and limits its ability to prosecute.

Civil society and business, on the other hand, are less dependent on the functioning of the public sector when performing their watchdog role. However, the impact of their activities is difficult to measure, and the stronghold of the party political mandate affecting many of the aforementioned institutions reduces their ability to influence policies through advocacy.

National Integrity System pillars: key strengths and weaknesses

The following section summarises the most important strengths and weaknesses of the Curaçao National Integrity System pillars, as identified in the preceding chapters.

LEGISLATURE (*Staten*)

Key strengths

- There are generally strong legal provisions to ensure that Parliament has the capacity to effectively perform its functions, both in terms of resources and independence.
- Parliament has numerous and sufficient powers to oversee the Executive.

Key weaknesses

- Party discipline is considered to considerably limit Parliament's independence.
- There are almost no formal provisions to provide for publication of parliamentary documents.
- Important provisions such as those related to gifts, assets, additional functions and lobbying contacts are not in place.

- Despite a strong legal framework, Parliament does not exercise sufficient executive oversight in practice and does not make effective use of the information and advice provided to support its oversight.

EXECUTIVE (*Ministers and Council of Ministers*)

Key strengths

- There are strong legal provisions to ensure both that the Executive remains independent and that it can be held to account for its actions.

Key weaknesses

- Because of a notable lack of transparency in the Executive, there is little clarity on which powers are delegated to whom, and how the Executive in practice uses its power granted.
- Because of weak oversight, the Executive does not make effective use of the recommendations provided by other actors to support its executive tasks.
- Current integrity provisions, including the screening process, still contain some loopholes and their effectiveness in practice cannot be assessed because of a lack of effective oversight.
- A structural commitment to a well-developed public sector is lacking, and the Executive does not sufficiently prioritise adoption and effective implementation of legislation.

JUDICIARY (*Joint Court of Justice*)

Key strengths

- There are strong legal provisions in place to ensure the independence of the judiciary.
- The judiciary is responsible for its own personnel and budget management and has adequate financial resources and personnel to achieve its goals in practice.
- The judiciary has considerable legal powers to oversee the activities of the Executive.

Key weaknesses

- Attracting and keeping adequate personnel remains a concern.
- The office of the registrar, which is 'the gateway to the judiciary', does not always operate effectively in practice.
- Even when the court produces decisions against the government, enforcement of those decisions can be problematic.
- There are no regular and comprehensive court statistics on corruption cases, and the annual reports of the Court of Justice do not provide an insight into the number of corruption convictions.
- There is no independent body to investigate complaints against the judiciary.
- The code of conduct and management rules have not yet been published, despite a legal requirement to do so.

PUBLIC SECTOR (*Administration, public companies and public foundations*)

Key strengths

- There are robust integrity rules for the civil service, including registration requirements for gifts and additional functions. There are also several whistleblower provisions.
- There is a corporate governance ordinance and a corporate governance code in place for public companies and public foundations.

Key weaknesses

- The independence of the administration is compromised by undue interference of the Executive. Transparency is generally weak. The public is insufficiently informed about the management of the administration, and whether its practice complies with the principles of good governance.

- Screening procedures for positions involving confidentiality in the public sector are not yet fully in place.
- Mechanisms to monitor and enforce compliance with integrity provisions are not yet fully in place.
- The letter and spirit of the corporate governance ordinance and the corporate governance code are not yet fully observed in practice. Transparency of public companies and public foundations is weak, and delays in reporting limit the ability to hold those entities effectively accountable.
- The public sector does not adequately inform and educate citizens about their role in fighting corruption.

LAW ENFORCEMENT AGENCIES (*Public Prosecutor's Office, KPC, Landsrecherche)*

Key strengths
- The legal framework contains several provisions designed to ensure the independence of law enforcement bodies, including robust provisions to appoint, suspend and dismiss law enforcement officers.
- The Public Prosecutor's Office is responsible for its own personnel and budget.

Key weaknesses
- There are serious concerns about the information processes of both the police forces and the Public Prosecutor's Office.
- Despite an enabling legal framework, police forces are unable to operate with a high degree of independence in practice because they are under financial control of the government.
- A few legal instruments are in place to ensure individual citizens' access to information on management and working procedures, investigations and prosecutions but overall, transparency provisions are limited.
- Investigation and prosecution of corruption cases is generally complicated and time-consuming. Insufficient financial and human resources (expertise) and institutional mistrust have a negative effect on the detection and investigation of corruption cases in Curaçao.
- There are no regular and comprehensive statistics specifically on corruption cases.

ELECTORAL MANAGEMENT BODY (HSB)

Key strengths
- The operational independence of the Supreme Electoral Council in practice is strong, and its integrity has not been questioned in spite of insufficient legal safeguards in this regard.
- The electoral council has been active and successful in ensuring the integrity of the electoral process in general.

Key weaknesses
- The legislative framework on the financing of political parties does not contain any provisions to ensure sufficient capacity and effective governance of the electoral council.
- The regulations on the financing of political parties are not effectively executed in practice.

OMBUDSMAN (*Ombudsman van Curaçao*)

Key strengths
- The legislative framework includes many aspects to ensure the independence of the Ombudsman, and in practice the Ombudsman operates in a professional and non-partisan manner.
- The Ombudsman recently adopted a code of ethics including many of the relevant provisions to ensure the integrity of the Ombudsman.

- The Ombudsman is generally active in dealing with complaints from the public on a case by case basis and in promoting good practice.

Key weaknesses

- There are only limited specific provisions which require the Ombudsman to release information on individual reports proactively between the Ombudsman's annual reports. Individual reports cannot yet be accessed via the Ombudsman's website.
- The lack of a uniform complaints mechanism within the administration puts pressure on the Ombudsman's capacity.
- Government officials are not always cooperative and do not always sufficiently comply with, or explain deviations from, the Ombudsman's recommendations.

SUPREME AUDIT AND SUPERVISION INSTITUTIONS PUBLIC SECTOR (*ARC, SOAB, Cft*)

Key strengths

- There are strong legal provisions to ensure that the institutions have the capacity to effectively perform their functions, both in terms of resources and independence. In practice the capacity of these institutions to perform their goals is generally adequate.
- The mechanisms in place to ensure the accountability and the integrity of the institutions are generally adequate.
- The institutions consistently provide the Executive with numerous suggestions to improve its financial management.
- Cft's recommendation to the Kingdom Council of Ministers to instruct the Curaçao government has spurred the government to improve its financial management.

Key weaknesses

- Existing provisions to ensure ARC's accountability are ineffective, largely because of delays in reporting.
- The effectiveness of the internal and external audit of Curaçao's annual accounts is limited, in part because their scope is not far-reaching enough.
- With some exceptions, the recommendations provided by the institutions do not receive adequate follow-up.
- The institutions experience practical difficulties in effectively auditing or supervising public entities, including public companies and public foundations.

SUPERVISION PRIVATE SECTOR (*CBCS, GCB, MOT*)

Key strengths

- The institutions receive generally adequate resources to achieve their goals in practice.
- CBCS's regulatory framework includes many aspects to ensure its operational independence.
- The existing legal framework in place to ensure the integrity of the supervisory institutions contains many relevant provisions.
- The legal framework in place generally allows for effective oversight of the larger part of the private sector, and all three supervisors have broad powers to identify and sanction misbehaviour and corruption.

Key weaknesses

- In practice there is a lack of effective supervision of lotteries and gaming activities other than those in casinos.
- The legal framework to ensure operational independence of MOT and GCB has some loopholes which may lead to undue influence or interference. GCB's operational independence is at risk.
- The legal framework to hold GCB accountable, as well as its practice, is weak.
- Accountability of CBCS in practice is weak because of lack of effective communications between the different stakeholders.

- There is little publicly-available information on processes, outcomes and impact of supervisory activities and little use of available sanctioning instruments.

POLITICAL PARTIES

Key strengths

- The legal framework provides an environment which is conducive to the establishment and operation of political parties.
- Political parties have extensive freedom to shape their internal governance and several parties have regulations in place to cover aspects of internal democratic governance.

Key weaknesses

- Transparency is very weak. There are no provisions to ensure that political parties make their annual reports and accounts public. The source of funds of most party finances is not disclosed. Politicians are not required to make any information on their finances publicly available.
- The regulation of party finances contains important loopholes and ambiguities which limit effective oversight. In practice, there is no financial oversight of political parties.
- Little is known about the internal democratic governance of the political parties.

MEDIA

Key strengths

- The legal framework provides an environment which is conducive to the development of a diverse media.
- Comprehensive legal safeguards exist to prevent unwarranted external interference in the content supplied by the media.

Key weaknesses

- There is a potential risk of conflict of interest regarding the registration, licensing and supervision of the telecommunications providers.
- Private ownership of media and dependence on financiers and revenue from advertising has severe consequences for the impartiality of news content.
- A shortage of trained journalists and low salaries result in unsubstantiated press releases ending up in radio and television programmes and newspapers without being thoroughly checked.
- Provisions to ensure the integrity of media employees are scarce.
- While the media do inform the public on corruption and its impact, reports are often limited, biased and of poor quality. The area of investigative journalism is virtually non-existent in Curaçao.

CIVIL SOCIETY

Key strengths

- There are no significant hurdles to the formation and operation of CSOs, and strong provisions are in place to prevent undue external interference or the threat of political or arbitrary dissolution.

Key weaknesses

- A large proportion of CSOs lack adequate resources and depend on external financiers to operate.
- There is limited information available on the number and activities of CSOs in Curaçao. It is difficult to determine their exact role in the integrity system.

- The overall level of transparency is inadequate. There are no provisions to ensure that CSOs publish their annual reports and accounts, information on their internal structure and sources of funding.

BUSINESS

Key strengths

- The legal framework provides an environment which is conducive to the effective operation of the business sector.
- A considerable number of businesses are active in corporate responsibility initiatives.
- Some business associations perform an important watchdog role.

Key weaknesses

- Administrative procedures to start and operate a business are bureaucratic, lengthy and time-consuming.
- Transparency is weak. There are some disclosure rules for businesses to make accounts and other information publicly available, but they are not comprehensive.
- Integrity and accountability is not ensured sufficiently throughout the business sector.
- There is no competition authority in place to enforce fair competition and to investigate cartels, approve or reject mergers and acquisitions, and promote competition through the publication of guidance notes and other advocacy activity.

RECOMMENDATIONS

While the run-up to the constitutional changes in 2010 has strengthened the legislative framework for anti-corruption and governance, this framework is not yet complete. The recommendations of this assessment thus include some specific recommendations to address some of the most prominent of these legislative loopholes. This is not to suggest the need for another major legislative overhaul or the introduction of another institution. Indeed, what should be of prime interest today in Curaçao is to improve the degree of implementation of existing legal requirements.

This involves working on the performance and internal governance of the 14 pillars, and the detailed recommendations that follow offer several specific recommendations to help enhance that performance. At a more general level, the key recommendations to highlight are as follows:

1. **Curaçao must ratify the United Nations Conventions Against Corruption as a matter of urgency and develop an action plan to ensure implementation and compliance.**

2. **All sectors of society must strive to increase the levels of transparency in their activities, internal procedures and funding sources. Given the pivotal role played by political parties in the Curaçao NIS, the transparency of political party financing requires particular attention.**

3. **The Government should prioritise funding and capacity building of law enforcement agencies to enable them to effectively conduct investigations and follow-up on cases put forward by Curaçao's active watchdog and oversight agencies.**

4. **Given the central role of the public sector in Curaçao's NIS, the Government must work to ensure greater independence and accountability of the public sector, ensuring that principles of proper administration are adhered to, that all internal mechanisms to ensure accountability and integrity are in place, and that compliance with these mechanisms is monitored and sanctions imposed where necessary.**

More challenging perhaps, but equally important is to work on strengthening the foundations of the new country, in particular, trust. As mentioned in the chapter on Curaçao's foundations, the level of interpersonal trust in Curaçao is not high. This is a major obstacle for any effective programme to address corruption and promote good governance. There is a general lack of trust in Curaçao's institutions and in the people who are running them. Many people are not in a good position to challenge misconduct of those in power, and accountability mechanisms in place are not sufficiently supported. Curaçao is also not especially strong in educating the next generation on good governance and anti-corruption. Instead, because of a lack of trust, investment in the many talented young people in Curaçao is too low, which lays the ground for weaknesses of the Curaçao National Integrity System of tomorrow.

To increase the level of formal trust means to ensure proper procedures, to engrain integrity into the country's institutions, to ensure adequate accountability provisions including whistleblowing provisions, and to increase transparency, including transparency on procedures followed, across the board. Some advances in the Curaçao National Integrity System of 2013 will need some time, but others can be realised today.

The recommendations presented below for each pillar focus on the key areas of weakness identified in the integrity system of Curaçao. Other suggestions for improvement may be found in the assessments of the different pillars in Chapter VI, as well as in the Appendix to this report which contains some more general examples of concrete actions to improve a National Integrity System.

LEGISLATURE (*Staten*)

- Government and Parliament must ensure that all legislation, including all country and ministerial decrees, is published on the internet within clear and reasonable time limits and with clear sanctions for non-compliance.

- Parliament should redouble its efforts to make all documents available on the improved website, and include minutes of meetings, committee reports and draft legislation.
- Parliament must establish a simple, transparent code of conduct, including provisions on additional functions and activities, gifts and financial interests, and publicly account for it.
- Parliament must maintain and publish a register of official missions of members of Parliament, and publicly report on those missions and their costs.

EXECUTIVE (*Ministers and Council of Ministers*)

- The Executive must ensure complete public access on the internet to the legislative framework of the country. This includes continuous text ('*doorlopende teksten*') of legislation in force.
- The Executive must ensure that the required report on the implementation of the ordinance on public access to government information is sent to Parliament annually, and should evaluate the effectiveness of the ordinance.
- Government and Parliament should formally codify several general principles of proper administration to ensure, among other things, legality, due care, and proper notification and motivation of administrative decisions as well as uniform procedures for the handling of petitions and complaints.
- Government should formally classify the position of minister as a position involving confidentiality (*vertrouwensfunctie*).
- Establish an effective mechanism to monitor compliance with integrity rules, including the registration of gifts, and ensure adequate reporting to Parliament and the public about the application and effectiveness of rules.
- The Executive must maintain and publish a register of official missions of the Executive, and publicly report on those missions and their costs.

JUDICIARY (*Joint Court of Justice*)

- The judiciary should redouble its efforts to improve the information process and the operational effectiveness of the office of the registrar.
- The judiciary should redouble its efforts to introduce a code of conduct and enforce its management rules.
- The judiciary should aim to reduce the length of administrative procedures.
- The judiciary should systematically publish comprehensive information on the number and types of corruption convictions.
- The judiciary should consider establishing an independent body to investigate complaints.

PUBLIC SECTOR *(Administration, public companies and public foundations*)

- Public sector agencies must publish on the internet all documents required to be made public.
- The Administration must implement existing whistleblower and integrity provisions, including the appointment of confidants (*vertrouwenspersonen*) and registration requirements.
- Government and Parliament should ensure that the reporting of corrupt practices that cannot adequately be addressed internally can be dealt with by an independent body.
- Government should formally classify positions involving confidentiality (*vertrouwensfunctie*) in both the administration and vital sectors (*'vitale sectoren'*).
- Public sector agencies should inform the public about how they can help to identify corruptive practices and help curb corruption.
- Government and Parliament must ensure that annual reports and accounts of public entities, including public companies and public foundations, are made publicly available, for example via a dedicated website.

- The Executive should draw up a follow-up implementation plan to monitor compliance with the corporate governance code for public companies and public foundations.
- Government or the Executive should implement provisions incorporated in the corporate governance framework to ensure the drafting of specific functions profiles, and the introduction of an institution to periodically evaluate the functioning of board members of public companies and public foundations.

LAW ENFORCEMENT AGENCIES (*Public Prosecutor's Office, KPC, Landsrecherche)*

- The Executive must provide for the allocation of adequate human and financial resources to ensure that the police forces (*KPC* and *Landsrecherche*) have the capacity to effectively conduct investigations and that the Public Prosecutor's Office has the capacity to prepare 'policy reports' (*bestuurlijke rapportage*) on lessons learned from investigations.
- Law enforcement agencies should provide training to police officials in the field of financial crime.
- Law enforcement agencies should work towards greater transparency in their operations by proactively informing the public about working procedures and the conclusion of cases, and by providing annual reports within the prescribed time limit.
- Law enforcement agencies should develop additional adminstrative steps to ensure effective follow-up on the registration of corruption cases.

ELECTORAL MANAGEMENT BODY (*HSB*)

- Government and Parliament must ensure the independence and integrity of the Supreme Electoral Council in the legal framework, including strengthening appointment, suspension and dismissal procedures. Government and Parliament must also ensure that HSB is given full authority to oversee the whole electoral process.
- Government and Parliament must ensure that the electoral council has sufficient financial and human resources to carry out all its tasks, including those related to the finances of political parties, and ensure continuity of the board, for example requiring members of the electoral council to set up a roster for resignation.
- The electoral council should evaluate each electoral process, and make those evaluations publicly available.
- The electoral council must regularly publicly account for the use of its supervisory powers and the effectiveness of its supervision of the finances of political parties. The Government and legislature must ensure that the electoral council is provided with the authority to levy sanctions for non-compliance with legislative provisions on political-party financing.

OMBUDSMAN (*Ombudsman van Curaçao*)

- The Executive must ensure sufficient human resources for the Ombudsman, for example by providing the office with a larger budget to attract and retain qualified staff or by ensuring valuable sounding boards.
- Government and Parliament should adapt the legislative framework to strengthen publication requirements of the Ombudsman. The publication requirements incorporated in the country ordinance Corporate governance, Article 4, may serve as an example.
- The Ombudsman should publish all (anonymised) individual reports and announcements on the Ombudsman's website, as well as the official reactions of administrative authorities to the Ombudsman's recommendations.
- The Ombudsman should include separate statistics on complaints and investigations related to suspected integrity breaches within the administration in his/her annual report.

SUPREME AUDIT AND SUPERVISIORY INSTITUTIONS PUBLIC SECTOR (*ARC, SOAB, Cft*)

- The institutions and the Executive should ensure sufficient capacity to conduct timely financial audits of Curaçao's annual account to allow for a timely discharge of the Executive.
- The Executive and public entities must ensure full and timely access to all information necessary for effective audits.
- The supreme audit and supervisory institutions (public sector) should introduce regular audits of public expenditures of public officeholders, such as ministers, in order to prevent (the perception of) victimisation and 'witch hunts'.
- SOAB should publish all (non-confidential) audit reports and account for those in more detail in the annual report. The annual report should include a list of all reports produced, and justifications for the non-disclosure of confidential reports.
- The supreme audit and supervisory institutions (public sector) should increase efforts to improve transparency regarding their internal governance, including existing integrity provisions and their implementation in practice and the publication of additional functions and activities of board members.

SUPERVISION PRIVATE SECTOR (*CBCS, GCB, MOT*)

- Government and Parliament should ensure independent supervision of the lottery sector, including adequate investigative and sanctioning powers.
- The board of the GCB should be supplemented with the additional three required members, and the Central Bank of Curaçao and Sint Maarten and the Chamber of Commerce must recommend their candidates for the board.
- Government or the Executive is to ensure that the board of the GCB adapts its charter to comply with the corporate governance code.
- The governance provisions for CBCS's board of directors and the supervisory board in the Bank's charter should be reviewed to strengthen accountability provisions and to ensure a balanced composition of the supervisory board with a sufficient number of members with relevant expertise in finance and economics.
- All three institutions should increase their efforts to ensure greater transparency in: (a) the use of supervisory powers and the effectiveness of supervisory activities, including sanction regimes, and (b) internal governance mechanisms, including existing integrity provisions and their implementation in practice, and the publication of additional functions and activities of board members.

POLITICAL PARTIES

- As a matter of urgency, government and Parliament must adapt the country ordinance Finances political parties (*Landsverordening Financiën politieke partijen*) to correct the current legislative loopholes and ambiguities governing political finance in the country in accordance with the United Nations Convention against Corruption (Article 7, paragraph 3).
- Political parties must submit annual reports, annual accounts and gift registers to the Supreme Electoral Council as legally required and should make annual reports, annual accounts, gift registers and internal governance mechanisms and regulations available on political-party websites.
- Political parties should review internal regulations and practice to further the principles of anti-corruption and good governance within the political party and its elected and appointed members.

MEDIA

- In order to prevent (the perception of a) conflict of interest, there must be a clear division of roles and responsibilities between the licensing/supervision of broadcast media and the activities of the state-owned telecom provider.
- Media must improve their internal governance procedures and work on internal integrity policies.
- Media must professionalize by working according to basic principles in journalism (e.g. independence, objectivity, confidentiality).
- An independent financial media fund (for example with donor funding) should be created to:
- Professionalise the media through training on investigative research and ethical issues
- Create opportunities for (new) media initiatives

CIVIL SOCIETY

- CSOs should improve their internal governance procedures and make these better known to the public.
- CSOs should disclose information on finance related to their activities, personnel, and administration costs, including their own lobbying efforts and funding streams, to guarantee transparency of their links with stakeholders.
- CSOs should implement clear and distinct whistleblowing policies as part of well-designed good governance codes, and make these publically available. They should provide protection for whistleblowers and sanctions for those who retaliate against them.
- The Executive should create more opportunities and mechanisms to involve civil society in policy formulation. This would require publication or sharing of draft documents with sufficient time for comment and engagement of key groups earlier in the policy-formulation period.

BUSINESS

- Businesses should increase transparency regarding their annual reports and accounts and disclose forms of political engagement, such as funding or support for CSOs. Large companies should lead by example.
- Businesses should implement clear and distinct whistleblowing policies as part of well-designed good governance codes and make these publically available. They should provide protection for whistleblowers and sanctions for those who retaliate against them.
- Businesses should work on internal integrity policies, with (pre-) employment screening for personnel, a code of conduct and awareness training.
- Government and Parliament should adopt a competition law and establish a competition authority.

IX. ANNEX

ANNEX I: EXPLORATORY TALKS AND INTERVIEWS

Since several interviewees were interviewed in relation to several pillars, the names of the interviewees are not arranged according to pillar, but by order of date. Former functions and/or the function of the person in the period under study are mentioned.

EXPLORATORY TALKS

Peter Bongers, chair Dutch Caribbean Accountants Association (DCAA), exploratory talk 1 October 2012.

Bonnie Bonesh and **Joop Kusters**, Kolaborativo, exploratory talk 1 October 2012.

Caroline Fievéz, chair Antillean Lawyers Association (*Antilliaanse Juristen Vereniging*) and **Pieter-Bas van Agtmaal**, chair Association of Antillean Tax Advisors (*Vereniging van Antilliaanse Belastingadviseurs*), exploratory talk 11 October 2012.

Arjen van Rijn, professor of constitutional law and constitutional renewal, University of the Netherlands Antilles, exploratory talk 21 October 2012.

Steven Walroud, former leader Grupo 40, exploratory talk 30 October 2012.

Jules Bijl and **Laurens Warnink**, director and acting director Cabinet of the Governor of Curacçao, exploratory talk 13 May 2013.

Xandra Kleine-Van Dijk, tax lawyer, exploratoy talks on several days in April and May 2013.

INTERVIEWS

Brede Kristensen, advisor public administration Curaçao, interview 3 and 6 November 2012.

Etienne Ys, former prime minister of the Netherlands Antilles, interview 12 and 15 November 2012.

Ruben Suriel, chairman Fundashon Akshon Sivil, interview 12 November 2012.

Alba Martijn, head of the Bureau of the Ombudsman, **Keursly Concincion**, substitute head of the Bureau of the Ombudsman, **Marjorie Tromp**, senior complaint counselor, Bureau of the Ombudsman, interview 13 November 2012.

Raul Henriquez, secretary of the Council of Ministers, interview 13 November 2012.

Norwin Carolus, former director of Legislation and Legal affairs Netherlands Antilles, interview 14 November 2012.

Medgar Elisa, head of the Landsrecherche Curaçao, interview 14 November 2012.

Julian Lopez Ramirez, former director of Fiscal Affairs of the Netherlands Antilles, former head Customs Netherlands Antilles, interview 14 November 2012.

Jason Nisbet, former director of Immigration Services of Curaçao, interview 14 November 2012.

Fred Breedijk, chair of the Curaçao Court of Audit, **Bertus Vis** and **Louise Santine Jr.**, members of the Curaçao Court of Audit, **Kessler Ersilia**, secretary of the Curaçao Court of Audit, interview 15 November 2012.

Raynold Nivallac, former director of Gaming Control Board, interview 16 November 2012.

Ton van der Schans, advocate general Joint Public Prosecutor Office of Curaçao, Sint Maarten and of Bonaire, Saint Eustatius and Saba, interview 16 November 2012.

Frank Kunneman, former vice-president of the Advisory Council of the Netherlands Antilles (Curaçao), lawyer and professor of civil law at the University of the Netherlands Antilles, interview 16 November 2012.

Jaime Saleh, minister of state of Curaçao, former Professor of constitutional kingdom law at the University of Utrecht, former governor of the Netherlands Antilles, former president of the Joint Court of Justice Netherlands Antilles and Aruba, interview 19 November 2012.

Dick Piar, procurator general Joint Public Prosecutor Office of Curaçao, Sint Maarten and of Bonaire, Saint Eustatius and Saba, interview 20 November 2012.

Gregory Damoen, former director of finance, interview 20 November 2012.

Anonymous, writer, former journalist, interview 20 November 2012.

Liesbeth Hoefdraad, president Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Saint Eustatius and Saba, interview 21 November 2012.

Mike Willemse, publisher and chief editor Antilliaans Dagblad, interview 21 November 2012.

Eric Garcia, president and CEO at GIRObank NV, interview 26 November 2012.

Geomaly Martes, managing director Administration's internal auditor (*Stichting Overheids Accountants bureau – SOAB*), chair Supreme Electoral Council (*Hoofd Stembureau*), interview 27 November 2012.

Roque Koeijers, former union leader and lawyer, interview 28 November 2012.

Reginald Doran, director of the Netherlands Antilles Development Foundation (*USONA*), interview 11 December 2012.

Don Martina, former prime minister Netherlands Antilles, interview 10 December 2012.

Bas Kooyman, board member Business Association Curaçao (*Vereniging Bedrijfsleven Curaçao*), interview 10 December 2012.

Kenneth Valpoort, board member trade union federation Central General di Trahadonan di Corsow (CGTC), interview 11 December 2012.

Alberto Romero, board member of financial supervision *(College financieel toezicht – Cft)*, interview 7 January 2013.

Renny Maduro, chairman supervisory board Central Bank Curaçao and Sint Maarten, interview 13 February 2013.

Jeffrey Sybesma, **Ersilia De Lannooy, Gisah de Sousa-Hollander**, Central Bank Curaçao and Sint Maarten, interview 26 February 2013.

Charles do Rego, board member Supreme Electoral Council (*Hoofd Stembureau*), interview 13 March 2013.

Miriam Sluis, author and former correspondent for the Dutch media (Radio Netherlands Worldwide, NRC, NOS), interview 25 May 2013.

Donald de Palm, advisor corporate governance (*Stichting Bureau Toezicht en Normering Overheidsentiteiten*), interview 28 May 2013.

ANNEX II: WRITTEN QUESTIONNAIRES

The following people and organisations received a questionnaire and were asked to complete and return it. In some cases, those sent a questionnaire were also interviewed. In that case, the questionnaire was completed during the interview. The people or organisations in *italics* were repeatedly sent reminders to return the questionnaire, but did not do so.

PILLAR 1: LEGISLATURE

Jaime Saleh, minister of state of Curaçao, former professor of constitutional kingdom law at the University of Utrecht, former governor of the Netherlands Antilles, former president of the Joint Court of Justice Netherlands Antilles and Aruba.

Arjen van Rijn, lawyer and professor of constitutional law and constitutional renewal, University of the Netherlands Antilles.

PILLAR 4: PUBLIC SECTOR

The (acting) secretaries general of the following ministries:

Ministry of Finance

Ministry of Traffic, Transport and Country Planning

Ministry of Education, Science, Culture and Sport

Ministry of General Affairs and Foreign Relations

Ministry of Public Health, Environment and Nature

Ministry of Social Development, Labour and Welfare

Ministry of Economic Development

Ministry of Justice

Ministry Administration, Planning and Service

Dutch Caribbean Accountants Association (DCAA) – public sector accountants

PILLAR 8: SUPREME AUDIT AND SUPERVISION INSTITUTION PUBLIC SECTOR

Curaçao Court of Audit (ARC)

Administration’s internal auditor (SOAB)

PILLAR 11: CIVIL SOCIETY ORGANISATIONS AND UNIONS

Civil society organisations:

Fundashon Akshon Sivil (FAS)

Grupo 40

Kousa Komun

Fundashon Frente Sivil

Korsou Uni

Stichting Milieu Organisatie Curaçao (SMOC)

Unions:

Sindikado Trahadornan di Aduana I Fiskalia (STrAF)
Bont Trahadornan Horecaf Kòrsou (HORECAF)

Sindikado National General Police (NAPB)

Petroleum Workers Federation of Curaçao (PWFC)

Algemene Bond van Overheidspersoneel (ABVO)

Sindikato di Empleado den Bibienda (SEBI)

PILLAR 12: POLITICAL PARTIES

The board of:

MFK-party, party leader Gerrit Schotte

PS-party, party leader Helmin Wiels (since deceased on 5 May 2013)

PAIS-party , party leader Alex Rosaria

PAR-party, party chair Zita Leito

MAN-party, party leader Charles Cooper

PNP-party, party leader Humphrey Davelaar

Independent, Glenn Sulvaran

PL-party, party leader Errol Goeloe

FOL-party, party leader Anthoy Godet

DP-party, party leader George Hernandez

PILLAR 13: PRIVATE SECTOR

Curaçao International Financial Services Association (CIFA)

Curaçao Bankers Association (CBA)

Antillean Contractors Association (AVV)

Dutch Caribbean Accountants Association (DCAA) – private sector accountants

Business Association Curaçao (VBC)

Chamber of Commerce and Industry (KvK)

Curaçao Hospitality and Tourism Association (CHATA)

Free Zone Association (Frezacur)

Association of International Bankers (IBA)

PILLAR 14: SUPERVISORY INSTITUTIONS (PRIVATE SECTOR)

Gaming Control Board (GCB) – external view

Gaming Control Board (GCB) – internal view

Financial Intelligence Unit (MOT)

Central Bank of Curaçao and Sint Maarten (CBCS)

ANNEX III: TRANSPARENCY INTERNATIONAL INFORMATION SESSIONS

Key stakeholders 3-7 September 2012

The following people and organisations received an invitation. The people or organisations in *italics* did not attend the meeting.

Public sector, 4 September 2012

Transparency International invited all secretary generals , together with the secretary of the Council of Ministers. All individuals mentioned below attended the meeting.

Gilbert Justiana, secretary general Ministry Administration, Planning and Service

Dwingo Puriel, secretary general Ministry Traffic, Transport and Country Planning

Stella van Rijn, secretary general Ministry of General Affairs and Foreign Relations

José Jardim, secretary general Ministry of Finance

Jeraldine Christine, secretary general Ministry of Health, Environment and Nature

Vanessa Tore, interim secretary general Ministry Economic Development

David van't Hof, policy director Ministry of Finance

Jeanine Constancia-Kook, policy director health, Ministry of Health, Environment and Nature

Raul Henriquez, secretary of the Council of Ministers

Supreme audit and supervisory institutions (public sector) and supervisory institutions (private sector), 5 September 2012

Frederik Breedijk and Kessler Ersilia, Curaçao Court of Audit (ARC)

Alberto Romero and Marnell Bosma, Board of financial supervision (Cft)

Raymond Faneyte (substitute for Geomaly Martes), Administration's internal auditor (SOAB)

Emsley Tromp, Central Bank of Curaçao and Sint Maarten (CBCS)

Marcella Lapre, (substitute for Alvin Daal), Gaming Control Board (GCB)

Kenneth Dambruck and Elvira Rosaria-Statie, Financial Intelligence Unit Curaçao (MOT)

Unions, 6 September 2012

Alcides Cova, Sentral Sindikal di Korsou (SSK)

Roland Ignacio, Central General di Trahadonan di Corsow (CGTC)

Kenneth Valpoort, Sindikado Horecaf (HORECAF)

Richenel Ilario, Sindikato di Empleado den Bibienda (SEBI)

Angelo Meyer, Petroleum Workers Federation of Curaçao (PWFC)

Wim van Lamoen, Sindikado Trahadornan di Aduana I Fiskalia (STrAF)

Kenneth Breemer, General Union Civil Servants (ABVO)

Ronald Abrahams, Sindikado National General Police (NAPB) (9 September 2012)

Wilfred Spencer, Curaçao Federation of Workers (CFW)

Coromoto Maria, Union for Nursing Staff (CBV)

Edmond Francisca, Sindikato Trahadornan di KAE (STK)

Darius Plantijn, Sindikato di Trahadonan den Edukashon di Korsou (SITEK)

Wendell Meulen, Union General di Trahadonan di Korsou (UGTK/CADMU)

Civil society organisations, 6 September 2012

Ivan (Onny) Gonet, Frente Sivil

Ruben Suriel, Fundashon Akshon Sivíl

Dito Abbad, Kousa Komun

Jeanette Bonet, Kòrsou Uní

Joop Kusters, Kolaborativo

Pastoor Simon Wilsoe, Konseho di Iglesianan di Korsou

Business groups, 7 September 2012

Peter Bongers, Dutch Caribbean Accountants Association (DCAA)

Willem Jonckheer, Curaçao Chamber of Commerce and Industry

Leo Rigaud, Curaçao Bankers Association (CBA)

Deanna Chemaly, Curaçao Trade and Industry Association

Michael Willem, Curaçao Trade and Industry Association (Curaçao Contractors Association, AVV)

Lizanne Dindial, Curaçao Hospitality and Tourism association (CHATA)

Ronald Irausquin, International Bankers Association (IBA)

Etienne YS, Curaçao International Financial Services Association (CIFA)

Nepomosino, Free Zone Association (FREZACUR)

Caroline Fiévez, Antillean Lawyers Association (AJV)

Individual visits

Liesbeth Hoefdraad, Joint Court of Justice of Aruba, Curaçao, Sint Maarten and of Bonaire, Saint Eustatius and Saba, 3 September 2012

Richard Hart, Council of State Curaçao, 3 September 2012

Jaime Saleh, independent legal services professional, 4 September 2012

Dick Piar, Heiko de Jong and Gerben Smid, Joint Public Prosecutor Office of Curaçao, Sint Maarten and of Bonaire, Saint Eustatius and Saba, 5 September 2012

Alba Martijn, Ombudsman of Curaçao, 6 September 2012

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